COMMENTARIES ON

THE

Expenditure Tax Act

(ACT No. 29 of 1957)

By

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Preface

Expenditure Tax though quite new to the world has been introduced in India and the Act shall come into force from 1st of April, 1958. There is absolutely no literature on the subject except that written by *Dr. Kaldor*, the British Economist of high repute. He has surely discussed this new method of taxation thoroughly in his own way but almost all the economists of different parts of the world have opposed him. The discussions and criticisms of economists like *Prof. Pigou* give sufficient matter for the academic study of the subject.

I have tried to give in short, all about the subject and have quoted case law from Income Tax Act because most of the sections of this Act have been taken from that Act. For the guidance of the legal practitioners I have put in a table of analogous law to which they can refer, while studying the case law given. A chapter on writs, resjudicata, estoppel and equity has also been put in. The appendix contains abstracts from Civil Procedure Code, Rules of Appellate Tribunal for appeals, and reference to High Court. A table of court fees and stamp duty at the end will be of great help to the practitioners. All that is required by the legal advisors of this line has been put in this book to make it a useful reference book for them.

A chapter on " What Assessees should know" explains all about this tax, 'method of filing returns, appeals, revisions and references'. The book contains all that may be required by the Bench, Bar and the Assessee.

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INTRODUCTION

Unnecessary spending and evasion of taxes, coupled with corruption have reached a point of national danger, so much so that they could attract the attention of a foreign economist who came here to make a hurried survey of the Indian Taxation structure. He suggested that in case the high taxation rate is brought down from 92 per cent to 45 per cent. and an Expenditure Tax is levied, the incentive for evasion will be weakened. He felt that it might be easier to identify and assess the expenditure than income which might help in a self checking, itself. This eminent economist is *Dr. Kaldor* whose proposals did not receive the approval of his own countrymen when as a member of the Royal Commission on the Taxation of Profits and Income, in U. K., he made this suggestion which was turned down by the Chancellor. The remark of Chancellor made in 1952 is of importance, looking to the degree of taxation reached in our own country. He remarked "With the level of indirect taxation which we have now reached, and the extent to which the expenditure of those whose expenditure is not confined to necessaries, includes a large element of payment of tax, it seems to me that it would be impossible to carry through the examination of a scheme of taxation on expenditure without also examining on fundamental lines, the scope and purpose of indirect taxation." Taxing of expenditure is not the original idea of *Dr. Kaldor* as some have begun to think in this country, though his contribution to this theory in this century is of importance. It was about 300 years back that *Hobbes* first began to think on this line and he said that an equitous way of taxing people was to tax them according to what they consume rather than on, what they earn. About 95 years back *Mr. J. S. Mill* discussed it before the Select Committee on the Income-Tax and Property Tax in the year 1861, in England, with no result in his favour. In 1942 such a proposal came up for consideration before the Congress of United States of America, but was turned down there too. *'Keynes'* clearly said that though theoritically correct it cannot be given an actual shape due to lot of practical difficulties.

Such a proposal in spite of a bad history has been excepted here in India and will be experimented upon. No where in the world this type of tax is being levied. The shape in which it has come is not the one as suggested by *Dr. Kaldor*. He actually wanted that this tax should replace the super tax and the general rate of taxation be reduced. Under his proposal personal expenditure in excess of Rs. 10,000 for adult per year was to be taxed, on a progressive scale, by a slab system, the rate of tax being 5 per cent where the expenditure was between Rs. 10,000 to Rs. 12,500 and then upto 300 per cent where the expenditure was in excess of Rs. 50,000 per adult per year. Infant was to be taken as half unit. By this he estimated a revenue yield between 15 and 18 Crores. He never wanted to give exemption to any body from it but at present only those whose income exceed Rs. 36,000 per year will have to pay tax on their expenditure and the rate of tax also ranges between 10 per cent and 100 per cent, instead of 25 per cent to 300 per cent as proposed by him.

Prof. Pigou said—"That this form would prove too much for them; that so wide a door for evasion be opened as seriously to impair the efficency of income-tax as an engine of revenue." (The word 'them' here, is used for administrators). But with all this *Dr. Kaldor* is sure that there will be less of oppertunities for evasion under his scheme. He feels that 'income' can never be a correct measure of the taxable capacity of a man, because the spending power of a particular individual is not taken into consideration there. This spending power is exercised by spending out of the reserve with a man or through other various receipts. Spending out of Capital is named by him as 'dissaving.' A man spending out of the amount that he earns as a wage cannot be said to have the same spending power as a man who spends out of the equal amount of earning from a property that he possesses. The sources of spending power can thus be many and cannot be put to a common denomination. According to him if any correct definition can be given to 'income,' it is consumption plus dissaving and as a lot of Rs. 5000; education allowance abroad upto a maximum of Rs. 8000, allowance for medical treatment, subject to a maximum of Rs. 5000 in the case of an individual and upto Rs. 10,000 in the case of a Hindu Undivided Family; allowance for the maintenance of his parents upto a maximum of Rs. 4000, etc.

RETURNS

Since the Act is to come into force from the 1st of April 1958, the first assessment will be made for the year (58-59) and so the return for this year must be filed before the 30th of June 1958, by every person whose income exceeds Rs. 36,000 in the relevent previous year. This return is to be filed under Section 13 (1) of the Act in the prescribed Form and verified in the prescribed manner. Where the Expenditure Tax Officer is of opinion that a particular person is taxable, he will give a notice to him to file a return but in such a case at least 35 days time will be given to him to do so. If the assessee feels that he or it cannot file such return during the time given, he can apply for extention of time and if the Officer feels that the demand is reasonable, he will extend the date. In case the assessee does not file a return in response to such notice, the officer will make a best judgment assessment under Section 15 (5), and may impose a penalty which will be as high as 1½ times the tax assessed or may prosecute him. Usually after the returns are received in the office the Expenditure Tax Officer will give a notice to the assessee to produce his books of accounts and other evidences in its support. Having heard them and after seeing the books, the officer will make an assessment and will then serve a notice of demand. The assessee has to deposit this amount within the time mentioned in the notice.

The computation of the taxable expenditure is to be done according to the provisions of the Act and the tax is calculated on the rates given in the Schedule.

ESCAPED WEALTH

In case where the expenditure chargeble to tax has escaped assessment the Expenditure Tax Officer will serve a notice on the assessee under Section 16 for an assessment of the escaped expenditure only. But he can serve such notice only if he—

(1) has reason to believe that by the reason of the omission or failure on the part of the assessee to make a return, his Taxable expenditure has escaped assessment or due to the omission or failure to disclose fully and truly all meterial facts the Taxable expenditure has escaped assessment,

(2) has in consequence of any information in his possession reason to believe that the taxable expenditure has escaped assessment.

In cases falling under the first catagory he can give a notice within 8 years and in cases falling under the second catagory the notice can be served within 4 years. The assessment of the escaped expenditure is then made and a tax levied.

APPEALS

Appeal Before Appellate Assistant Commissioner.—The assessee has a right of appeal against the order of the Expenditure Tax Officer if he is aggrieved by it. The first appeal against the order of assessment of the Expenditure Tax Officer is to be filed before the Appellate Assistant Commissioner within 30 days of the receipt of the notice of demand. It is to be on the prescribed form and is to be verified in the prescribed manner. The Appellate Assistant Commissioner is authorised to admit an appeal even if it is filed late but he will do so only if he is satisfied that there was some reasonable cause of such delay in filing the appeal.

Stay.—After filing an appeal under Section 21 the assessee may apply to the Expenditure Tax Officer to stay the realisation proceedings for the tax demanded and the Expenditure Tax Officer if he so likes ; can stay the realisation, till the disposal of appeal.

There are other expenses also which according to him should be excempt from tax. He also suggested a concession, by putting a higher exemption limit in cases where it applied to tax payer above the retirement age. The other transational problem that would come up will be the hoarding tendency of the people in cash and therefore a rush on the bank. To undo this all, he suggested that the old notes be called back or cancelled and new issued in its place. This will naturally result in the disclosure of all such hoardings. There may be cases also where the peaple may save sufficiently here, and go out of this country, to avoid the tax. Needless to say that the units of taxation under this scheme are only two—(1) an individual and (2) a Hindu undivided family. A firm, an associatton of persons or a company have not been taxed, and the rate of tax varries from 10 per cent. to 100 per cent.

The administration of this tax will be most difficult with the present machinery because the people of income tax department are already over-worked, and unless sufficient staff is added to the present strength it may not be possible to cope with the work, efficiently. The public may not cooperate so much because of the lack of education in the masses and mainly due to undeveloped economy. *Dr. Kaldor* proposed to compel people to send one consolidated return of his income and,

expenses so that the cross checking may be possible and this will lessen evasion which is to the extent of 30 to 40 crores in India, according to the Government figures and as reported by him, 200 to 300 crores.

Economists in different parts of the world have clearly said that the administration of this tax will be very difficult but in spite of all this *Dr. Kaldor* feels that it should be experimented upon and will prove successful. Let us hope so in the benefit of the nation. We shall all be really very thankful to him if this system can help in distributing the tax burden equally on all and in stoping the high tax evasion.

Extract from the financial memorandum published on pages 156 and 157 of the Gazette of India Part II will give the reader an idea how this Act will be administered and what will be the extent of expenses that the Government will have to incur on this account. A part of it is given below :—

FINANCIAL MEMORANDUM

This Act proposes a levy of tax with effect from 1st April, 1958, on expenditure of individuals and Hindu undivided families. Though this is a new tax, the procedure for assessment and collection of this tax is very much allied to that of taxes on income. It is accordingly proposed that for the time being the tax be administered by the Income-tax Department and that no separate administrative machinery need be set up.

The existing pressure of work on the Income-tax Department, is however, already quite heavy. This pressure is likely to increase further on account of the proposed lowering of the minimum taxable limits. It will, therefore, be necessary to expand adequately the staff at various levels of the departmental cadres.

The increase of personnel, along with incidental expenses of administration is estimated to cost Rs. 8 lakhs per annum ultimately. Actual recruitment of staff will, however, be made as and when it is found really necessary.

I. VOLUME OF WORK

Estimated number of assessment :

(*a*) Individuals	...	...	...	4,500
(*b*) Hindu undivided families	...	...	...	1,500
				6,000

II. REQUIREMENTS OF PERSONNEL AND FINANCE

Officers

1. No. of Inspecting Asst. Commissioners and Appellate Asst. Commissionsrs (1+2)	3	3 × 1200 × 12 = Rs.		43,200

2.	No. of Income-tax Officers Taking the average disposal per I. T. O. per annum at 300 ...	20	20 × 500 × 12 = Rs.		1,20,000
	Staff				
3.	No. of Inspectors ...	10	10 × 250 × 12 = Rs.		30,000
4.	No. of Supervisors ...	4	4 × 350 × 12 = Rs.		16,800
5.	No. of Head Clerks ...	10	10 × 250 × 12 = Rs.		30,000
6.	No. of Upper Division Clerks	50	50 × 150 × 12 = Rs.		90,000
7.	No. of Lower Division Clerks	30	30 × 120 × 12 = Rs.		43,200
8.	No. of Stenographers ...	9	3 × 150 × 12 = Rs.		5,400
9.	No. of Stenotypists ...	20	20 × 140 × 12 = Rs.		33,600
				Rs.	4,12,200
			say	Rs.	5 lakhs
	Incidental expenses including Class IV staff and contingencies etc.		..	Rs	3 lakhs
			Total	Rs.	8 lakhs

WHAT ASSESSEES SHOULD KNOW

Expenditure Tax Act will come into force from 1st April, of 1958, and the taxable units under this are two :—

(1) An individual (2) A Hindu Undivided Family.

This tax shall be payable by an individual or a Hindu Undivided Family for any assessment year if his or its income from all sources during the relevant previous year exceeds rupees thirty-six thousand. White computing the income for this purpose all the taxes to which such income may be liable under any law of the land will be deducted from it. If the income exceeds 36,000 rupees the tax levied will be at the rates given below :—

RATE OF EXPENDITURE-TAX

In the case of every individual and Hindu undivided family, on that portion of the taxable expenditure :—

(*i*) which does not exceed Rs. 10,000 ..... 10 %

(*ii*) which exceeds Rs. 10,000 but does not exceed Rs. 20,000..... 20 %

(*iii*) which exceeds Rs. 20,000 but does not exceed Rs. 30,000..... 40 %

(*iv*) which exceeds Rs. 30,000 but does not exceed Rs. 40,000..... 60 %

(*v*) which exceeds Rs. 40,000 but does not exceed Rs. 50,000 ..... 80 %

(*vi*) which exceeds Rs. 50,000..... 100 %

Previous year —The first assessment under this act will be made for the year 58–59 and the relevent previous year for this will be 57-58 where the accounts are kept up from 1st of April to 31st of March, for general discussion of the previous year look into the body of the commentary under section 2 (*n*).

Expenditure.—It is any sum in money or money's worth spent or disbursed or for the spending or disbursing of which a liability has been incurred by an assessee and includes any amount which under the provisions of this act is required to be included in the taxable expenditure.

Taxable Expenditure.—It is the total expenditure of an assessee liable to tax under this Act.

Include in taxable expenditure.—The following amount shall have to be included in the taxable expenditure of the assessee :—

(1) Any expenditure which is incurred by any other person, directly or indirectly, on account of the obligation or for the personal requirement of either the assessee or his dependent which but for this would have been incurred by the assessee. But an expenditure of this type upto Rs. 5,000 in a year, will not be thus included.

(2) Any expenditure which the dependent incurs expends out of any other source, created by the assessee, provided this expenditure is for the benefit of the assessee himself or for any of his dependent. Trivial expenditures incurred by way of hospitality, by any other person on behalf of the assessee will not be thus included.

Do not include in Taxable Expenditure.—There is a long list of expenditures given in Section 5 of the Act which are not to be included in the taxable expenditure and no expenditure tax will be levied on them. This list consists of capital and revenue expenditures incurred by the assessee for any business, profession, vocation or occupation carried on by the assessee, any amount incurred by way of the repayment of the loan, etc.

Deductions and Allowances.—In addition to the above exemptions given in Section 5 of the Act, Sections ; 6 gives a number of deductions and allowances a basic allowance of Rs. 30,000 has been given to an individual and in the case of Hindu undivided family it can go upto Rs. 60,000 according to the size of the family, at the rate of Rs. 30,000 for each additional cooparcener, a marriage allowance upto a maximum of dissavings are not taxed it results in inequities. He therefore recommends to make 'spending' as the Criteria for taxation, because according to other economist also a man imposes a burden on the society in which he lives, for fulfilling his own ends, by spending and never by earning or saving.

Thus a tax on the 'spending' could be levied by taxing the commodities of consumption and also the services of different kinds but such a way will be more regressive. It was therefore better if personal expenditure was made the subject of taxation, though for that tax-payer will have to keep a complete account of all his expenditure, with minute details. How for the government is justified in a pressing people to give such details, is a thing to be considered. Expenditure is the difference between the money 'incoming' and 'outgoing'. What is spent is nothing but a difference between what one has at his disposal for spending in the beginning and what he is left with, at the end. If at all this has to be made as the base of taxation, the 'gross personal expenditure' and "the net chargeable expenditure" will have to be defined. In defining 'Net chargeable expenditure' the question of defining' *'Consumers' Caple expenditure'* will come up and at the same time one will have to ascertain what benefits are available from the possession of durable goods. The most important problem will be to make out a list of such expenditure which will not be subject to charge of this tax. It will rather be difficult to make a list of this kind. Where the consumer's capital expenditure is, on such goods, which are very durable, it gives the possessor a source of capital gains because snch goods are in the form of capital

wealth. It thus becomes a problem whether to exempt such investment or to treat it as the taxable expenditure. *Dr. Kaldor* suggests that in such cases, this expenditure should be exempt but an annual charge be levied on the value of the benefits derived from such ownership. There are other things also to be taken into consideration when adopting to this system of taxation. For example under this system the burden of expenditure should vary according to the standard of the living of the assessee and this should be calculated per head rather than per household. Similarly unavoidable expenses due to misfortunes, are to be exempted because a man is forced to spend on such items. Such expenses are expenses on, birth, death, medical expenses, fines and penalties. These expenses are known as 'involuntary' expenses but expenses on fooding, shelter and education are 'voluntary' expenses. Making a list of such exemptions will be a difficult task, and in the case of a business establishment it will be still more difficult to ascertain as to which of the expenses be exempt. He suggests that in such cases expenses wholly, exclusively and unavoidably incurred for the making of profit in the year should be surly exempt Such expenses here, will be those incurred on wages, material, fuel, rent of office premises, interest on capital borrowed, repairs, employee's bonus, etc.

Business expenditure and business loss are two different things, which the readers should not confuse. *Judge Finlay* says that the expenditure or disbursement means "Something or other which the trader pay out ; I think sort of volition is indicated. He chooses to pay out some disbursement it is an expense; it is something which comes out of his pocket. A loss is something different. That is not a thing which he expends or disburses. That is a thing, which so to speak, comes upon him "*ab extra*' Regarding depreciation allowances given every year at present he wants that an initial and annual allowance should be allowed in the very begining such as a 90 per cent, immediate allowance in case of equipment, 50 per cent. in case of second class buildings. The unabsorbed allowance can be allowed to be carried forward in the future years, with and intest to be given on such allowances.

Appeal Before Appellate Tribunal.—If the assessee is dissatisfied even with the order of the A. A. C. he can file a second appeal before the Appellate Tribunal within 60 days from the date of the service of the notice of such order. The Commissioner of Expenditure Tax is also authorised to file an appeal against this order.

This appeal is to be filed in the prescribed form, verified in the prescribed manner and should be accompanied by a fee of Rs. 100. The Commissioner is not required to deposit this fee.

Revision.—The application for revision is to be made to Commissioner. The assessee can file a revision against the order of the Expenditure-tax Officer or against the order of the Appellate Assistant Commissioner within one year from the date of the receipt of the order to be revised. Such an application should be accompanied by a fee of Rs. 25. But such a revision before the Commissioner can be filed only :—

the time within which an appeal can be filed, again order before the Appellate Assistant Commissioner or the Tribunal, has expired or.

(2) where an appeal lies before the Appellate Tribunal, the assessee has waived his right of such appeal or.

(3) where the appeal is not pending before the Appellate Assistant Commissioner or the Appellate Tribunal.

Thus the first appeal is before App. A. C., then next the assessee can move the Commissioner for a second appeal which is called revision, provided he can afford to waive his right of appeal to the Appellate Tribunal. In cases where the assessee can afford to go to Tribunal he should proceed that way because that is a better procedure of getting the grieviences redressed. The Commissioner should advisably be moved only in cases where the amount involved is not much because in such cases if one goes to Tribunal, he will have to incur heavier expenses on account of Government fee (Rs. 100) and other expenses of going to Tribunal. Secondly Commissioner is moved monthly in cases where the appeal to Appellate Tribunal has become time barred.

Reference to High Court and Supreme Court.—Where any question of law arises out of the order of the Appellate Tribunal, an application for making a reference on such point to High Court can be made by the assessee after paying a fee of Rs. 100. In cases where the High Court recommends, the assessee can go to Supreme Court. In addition to this the assessee can move writs whereever he finds no other remedy.

PENALTIES ON ASSESSEE

Penalties can be imposed on an assessee who :—

(1) has failed to furnish return of his taxable Expenditure,

(*a*) by the 30th day of June if he is taxable, under the Act or,

(*b*) against a notice of the Expenditure Tax Officer, under Section 13(2) or Section 16,

(2) has without reasonable cause failed to comply with a notice (*a*) to appear or (*b*) to produce evidence in support of his return or (*c*) to produce accounts, records or documents as required by the Expenditure Tax Officer,

(3) has concealed the patticulars of his expenditure or has knowingly furnished wrong returns.

The penalty in case of (1) will be tax payable plus a sum not exceeding 1½ times such tax, and in cases failing under (2) and (3) the penalty will be tax payable plus, a sum not exceeding 1½ times the tax, that would have escaped assessment. No penalty can be imposed unless the person concerned has been given an opportunity of being heard and a prior sanction of doing so has been taken from the Inspecting Assistant Commissioner.

ASSESSEE-WHEN-PROSECUTED

I. If a person without reasonable cause fails—

(1) to furnish his return in time,

(2) to produce accounts, records and documents whenever called for, by the Expenditure Tax Officer for assessment,

(3) to furnish statements or information as required by the Expenditure Tax Officer, rfo determining the taxable expenditure.

II. Where the assessee makes a' false statement knowingly. In such cases he shall be punished with simple imprisonment which may extend to one vear or to a fine which may extend to one thousand rupees or with both.

THE
EXPENDITURE TAX ACT, 1957

(No. 29 of 1957.)*

[17th September, 1957].

An Act to provide for the levy of a tax on expenditure.

Be it enacted by Parliament in the Eighth Year of the Republic of India as follows :—

Commentary

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Double Taxation.
Priority in realising Tax.
Knowledge of other branches of Law.
History of Expenditure Tax and Wealth Tax.
Gift Tax.
Expenditure Tax.
Wealth Tax.

Government have been seriously thinking to evolve a composite system of taxation that would satisfy the criterion of the ability of our citizens to pay, and would stop colossal waste of National wealth concentrated in the hands of a few who do not very much realise their duties their country and spent large amounts on personal luxuries without towards putting it to any productionuse. It was also desired that the system evolued may at the same time help the attainment of a Socialistic Pattern of Society. With these ends in view Expenditure Tax absolutely new to the World has been introduced in this country which is one of the biggest democratic State. It is hoped that it may work as a great incentive saving and may also form a significant part of the integerated tax structure of the country.

Preamble.—A Preamble though a key to the Act does not show the entire scope or intention of the Act[1]. It is never the part of the Act but

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*Received the Assent of the President on 17th September, 1957, and was Published in the Gazette of India dated the 18th September, 1957 Part II—Section 1 Page 407.

1. Om Prakash Mehta vs. King Emperor, I. L. R. (1947) Nag. 579 ; Rex. vs. Basudev A. I. R. 1950 F. C. 67.

only gives a dim picture or can be said to be a recital on the same[1]. In cases where the provisions contained in the body of the Act seem to be vague, the help of the preamble be taken to explain them[2], though not normally and for creating an ambiguity[3] it can never be invoked.

It does not shorten the scope of the provisions but can surely be used to restrain the meanings for convenience[4] sometimes, it indicates the intention of law makers[5], but cannot override the Act itself.

Where the terms in a Statute are plain and clear it is necessary to explain them as they stand and not to twist the meaning by speculation about the intention of the Legislatures[6]. The words used should be given their natural meaning even if the interpretation leads to anomalies[7]. Fiscal statutes should always be interpreted in favour of the subject in cases where there could be two meanings and it is not just, to strain the language or the meaning of the same in order to tax a particular person. Penal provisions have always to be construed in favour of the assessee. In a taxing Statute distinction should be drawn between the charging sections and the sections implementing the charge. Too rigorous a construction for the implementing sections of a fisical law will defeat the very end it wants to achieve and it is a rule that it should be given that construction which makes the machinery workable[8]. It has also been laid down that if the power to impose a tax is given, the tax levied can be collected even if no procedure of collection was mentioned[9]. If a man under the common meaning of the words used in the Statute is taxable he cannot be allowed to go without being taxed however great the hardship may seem to fall on such person. In taxing Statutes it is not advisable to draw analogies from different other Acts of taxation such as Stamp Act etc., but where the provisions of the Statutes are similar to the rules laid down by the case law under such Statutes can be followed safely[10].

Objects and reasons.—The following Objects and Reasons accompanied the Expenditure Tax Bill published in the Gazette of India Extraordinary Part II dated 15th May, 1957 page 137 :—

> "The object of this Bill is to impose an annual tax on personal expenditure, above a prescribed level, of individuals, Hindu undivided families. Such a tax in addition to being a deterrant to excessive personal expenditure and an incentive for savings also forms a significant part of an integerated tax structure".

1. B. Chander Sircar Chaudhary vs. B. C. Ray Chaudhry, 13 B. L. R. 408.
2. Chunna vs. M. Fakiruddin 2 M. 322; Union of India vs. Mohan Chandra A. I. R. 1952 Assam 159.
3. Janendra Nath Nanda vs. J. N. Banerji, I. A. R. 1938 Cal. 211.
4. Karunakar Neathai vs. Niladhar Chaudhary 5 B. L. R. 652.
5. Anwar Ali Sarkar vs. The State of West Bengal A. I. R. 1952 Cal. 150.
6. Anwarul Hasan vs. Nazuin Begum A. I. R. 1947 All. 34.
7. Shatrughan Singh vs. Kedar Nath, A. I. R. 1944 All. 126.
8. Mahali Ramji Das vs. C. I.T. Bengal I. L R. (1940) 2 Cal. 215 P. C.
9. Sir Byram Jeejeebhoy vs. Province of Bombay I. L. R. (1940) Bom. 58, 95.
10. S. M. Chopra vs. S. M. Hameed A. I. R. 1945 Avad 59.

The object of this Act is to impose a tax on the personal expenditure of an individual, Hindu undivided family with an aim of attaining the goal of a socialistic pattern of society. The wealth of the nation can not be allowed to be wasted in the hands of a person because it will be a national loss if it is not being put to any productive use. It increases the bad habits and also makes person undesirably luxurious.

Hobbes. About 300 years back suggested that the taxation of individuals should be on the basis of what they can spend and not on what they earn. From the point of view of equity, also taxing are on what he can consume is much better than taxing him on what he earns. *Mr. John S. Mill* supported this idea and pleaded it before the Select Committee on Income and Property Tax in 1861 in England. The chain of this novel thought was taken up by a number of distinguished economists who all felt that it is by the spending capacity of a man which gives you a clear indication of his income and this can not be so easily concealed as the income. There are other economists who say that the principle of taxing income (including savings) confers a differential benefit on property owners as against those people who earn their income by the sweat of their brow or personal industry. The latter cannot treat their entire income as 'spendable' as the former can.

Dr. Kaldor says "The real inequities of the system arise not so much from the failure to exempt savings out of income but the failure to tax as income the *spending power* that is exercised through disasvings (or spending out of capital) or through the capital profits or other receipts of various kinds. Since these non-taxable sources of spending power are not distributed at random but are closely linked with the ownership of capital, taxation according to income introduces a bias in favour of property owners whose taxable capacity is under rated relatively to those who derive their income from work. Moreover since taxable income from property can be converted into capital gains in numerious ways income is not only a defective measure of taxable capacity but one whose relation to taxable capacity can be manipulated by certain class of tax payers."

Dr. Kaldor therefore feels that there could be no other way of equitably distributing the tax burden than a system that would levy a tax as expenditure. It is said that expenditure tax is a better instrument thus for controlling the economy in the interest of the economic stability and progress of the country than levying a tax on income. It is claimed that by such a type of progressive taxion basis it would be possible to attain the goal of making a socialistic pattern of society. In the year 1942 *Mr. Morgenthan's* a Senator of the American Senate placed a proposal of this type before the Finance Committee when he said "Unnecessary spending has reached a point of national danger and will threaten the success of war." It was vehemently opposed and one Senator said that such a tax would lower the standard of living to a dead level. This bill was finally rejected and never saw the light of the day. The rate suggested there was not very high. It was only 75 per cent on spendings (per capita) in excess of 10,000 dollars a year. But *Dr. Kaldor* still feels that the vested interests only want to oppose it because of the danger of further encroachment of the egalitarian tide on their luxuries.

Dr. Kaldor defines 'income' in short as consumption plus savings. Because certain forms of savings are taxed and others are totally exempted and as no attempt is made to bring dissavings into charge it results in numerious inequities. It is his claim that the evasion of tax will be very much reduced by the introduction of such a tax system. The rate of tax fixed now ranges from 10 % to 100 % only and the expediture of only such individuals or Hindu undivided family is taxed whose income exceeded Rs. 36,000 after paying all the taxes.

The Expenditure Tax Bill of 1957 was introduced in the Lok Sabha in persuance of clauses (1) and (3) of Article 117 of the Constitution of India, with the due recommendation of the President. Art. 117 (1) of the Constitution runs as follows :

Clause (1) Art. of 117.—A bill or amendment making provision for any of the matters specified in sub-clauses (*a*) to (*f*) of clause (I) of Article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States.

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax".

As a reference in this Article has been made to Article 110(I), it has become necessary to quote this Article so that readers may have a complete grasp of the procedure adopted in bringing this Bill before the Lok Sabha for converting it into a regular Act. Article 110 (1) runs as follows :

Clause I of Article 110—"For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely—

(*a*) the imposition, abolition, remission, alteration or regulation of any tax ;

(*b*) the regulation of the borrowing of money or the giving of any guarnatee by the Government of India or the amend ment of law with respect to any financial obligations undertaken or to be under taken by the Government of India ;

(*c*) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund ;

(*d*) the appropriation of moneys out of the Consolidated Fund of India ;

(*e*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure ;

(*f*) the receipt of money on account of the Consolidated Fund of India or the Public Account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State ; or

(*g*) any matter incidental to any of the matters specified in sub-clauses (*a*) to (*f*)".

Since this Bill imposes a new tax it is covered under sub-clause (*a*) and accordingly could be introduced only on the recommendation of the President which step was necessary.

Reproduction of clause 3 of Article 117 is also necessary in this connection and is given below :—

Clause (3) Article 117.—"A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill".

Because this bill when enacted will effect the Consolidated Fund of India[1] the recommendation of the President was so necessary. Thus the bill was properly introduced in the Lock Sabha went to the Select Committee which submitted its report and was then finally passed in the month of September, 1957 to become a regular Act for imposing tax on the taxable expenditure of a person. It is a new experiment being conducted by such a big democratic state of the world even when advanced countries like America and England could not dare to introduce it in their own countries *Dr. Kaldor* actually wanted to reduce the rate of taxation on income from 92 per cent. to 45 per cent, and then add the two new taxes the "Wealth Tax" and "the Expenditure Tax". These two new taxes are introduced without reducing the rate of Income tax and it is to be seen how far the present staff of the Income Tax Department which is already over burdened with the extra responsibility of Estate Duty and Lower Tax Limit assessments, will be able to share this additional responsibility.

Punctuation marks.—The punctuation marks are a part of the Statute[2]. It does not control the meaning of the section[3]. It has to be read without the commas (,) in the print[4].

Words in Statutes.—Where a word in a Statute has been used at different places, it will be presumed to have been used in the same sense[5], in which it had been used before in the Statute unless suggested otherwise due to the context. A word used in different statutes may carry different meanings because the two statutes may be for different purpose[6].

Marginal Notes.—Marginal notes cannot be referred to, while interprating a statute but in cases where the words used do not seem to give any clear meaning a reference to marginal notes in order to know the purpose of the section is not bad[7]. These notes are not a

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1. See Constitution of India Article 266 (I).
2. Secretary Board of Revenue vs. Ram Nathan Chattiar, A. I. R. 1924 Mad. 455.
3. Bhola Singh vs. Raman Lal A. I. R. 1951 Lah. 98. 28,
4. L. Mansa vs. Mt. Aoncha, A. I. R. 1933 All. 521=I. L. R. 1933 All. 700.
5. Gajadhar Singh vs. Emperor, A. I. R. 1946 Nag, 200.
6. Bahadur Singh Raghubir Singh vs. C. I. T., A. I. R. 1948 Nag. 228.
7. State of Bombay vs. Heman Sant Lal, A. I. R. 1952 Bom. 16.

of the enactment and should not be used to restrict or curtail the meaning of the sections.

Headings.—In cases of ambiguity the headings are a great help in finding out the meaning of a particular section but they cannot control the provisions of the section[1]. They only act as a Preamble to the section[2].

Schedule.—"It is a part of the Statute or the enactment[3] but in case it contradicts the earlier part will hold good and not this[4].

Forms.—Forms are also a part of the Statute and such forms could be altered by the Revenue authorities in case where it is necessary and such alterations made shall be valid[5]. If a form prescribed is incomplete, the Statute cannot be interpreted in the light of the incomplete form[6]. It explains that such forms cannot be a guide to the Act. The notes in the forms have the same force as the Act if they are not in conflict with the sections of the Act[7].

Territorial Limitation.—Under Indian Independence Act and under Article 245 of the Constitution of India the Legislature has full powers to pass laws that will have extra-territorial jurisdiction or operation[8].

The decision in the *Wallance Brother's* case has become absolete, because, it relates to pre-1947 law but under sub-section (1) of Section 6 Indian Independence Act 1947, there is power given to legislature to make laws having extra-territorial operation. As said above Article 245 supercedes the Act of 1947 and its sub-section (3) says—"No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation".

Proviso and Explanation.—In cases where a section has a number of provisos, it has to be read as a whole and an attempt is made to reconcile them and give an extensive and logical meaning[9]. A proviso can never be made applicable to a case where the principal portion of the section is not applicable to it. It can not give a different meaning to it but can only help in finding out as to which of the two constructions are to be adopted. A proviso always restricts or excludes while an "Explanation" makes the thing clear[10]. Where a proviso is directly contrary to

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1. Durga Thathera va. Narain Thathera, A. I. R. 1931 All. 597.
2. Shanta Rao vs. Madhorao Sheshrao, A. I. R. 1951 Nag. 121.
3. (1871) 3 Ex. D. 229.
4. Crais—Statutes Law, Page 203 4th Edition.
5. Rajendra Narain vs. C. I. T. 21 T. C. 82.
6. Ormand Investment Co. Ltd. vs. Betts—13 Tax Cases. 400.
7. C. I. T., Burmah vs. P. K. N. P. R., Firm, 8 Rangoon 209
8. Wallance Brothers vs. C. I. T., Bombay, 1945 I. T. R. 39 (F. C).
9. Broach Co-operative Bank vs. C. I. T., A. I. R. 1950 Bom. 45.
10. Madras and Southern Mehratha and Co. vs. Bezwada Municipality, A. I. R. 1944 P. C 71.

the scope of the Act it will amount to a repeal of the purview of the Act while the proviso shall stand as the last intentions of the legislatures are expressed through it[1]. When a section has two provisos where the second is repugnant to the first, it will prevail as it stands last . The explanation does not enlarge the scope of the section but only explains it[2].

Words include and mean.—These are two interpretation clauses. Where in the defination the word 'include' is used declaring to include so and so, it extends the meaning of that particular defination, it enlarges the meaning of that part of the Statute and in such a case it indicates that things more than what signified according to their natural import shall also be included, while the word "mean" is only explanatory and restrictive.

The words "Unless there is something repugnant to the subject or context" often precede the interpretation clauses and where certain words have been given a particular meaning, they shall mean[4] the same throughout that statute, unless by doing so a repugnancy is created, in the subject or context.

This is a saving clause and helps in finding out the construction or the meaning of the terms given in the defining section. For example the term 'Assessee' in sections 24 and 64 of the Indian Income Tax Act is not used in the same sense as in section 2 (2) of the same Act.

The other saving phrase often used before definations or before the interpretation sections, is.—

"Unless the context otherwise requires." The notes given above apply to this phrase also.

Rules and Act.—Rules do not save an Act and cannot go against the Act because they are made to carry out the purpose of the sections of the act. The validity of an Act cannot be challanged upon some mistake in the rules. But such rules as made under the authority of the statute are as good as the sections of the Act[5]. Statutory rules made under an Act have to be interpreted and read with the particular sections under which they are made.

Where the rules are not in accordance with the sections of the Act the courts will not give much importance to them but shall only be guided by the wordings used in the particular sections.

Executive Instructions.—Such instructions given to the departmental officers by their heads are not at all binding upon the Judicial Officers and the Court is free to interprete them in its own way[6].

1. Burmah Shell Oil Storage vs. Municipal Committee, A. I. R. 1940 Nag. 145.
2. His Majesty the King vs. Dominion Engineering Co., 1945 W. (P.) 12.
3. Kishan Singh vs. Prem Singh, A. I. R. 1939 Lah. 587.
4. Mahim Chand vs. Digmanik Union A. I. R. 1947 Cal. 41.
5. Khetsidas Girdharilal vs. Pratapmal Rameshwar A. I. R. 1946 Cal. 197.
6. C. S. T. vs. Ratilal Nanchand (1955) 6 S. T. C. 714

Definitions.—Every Act has to define a number of words or phrases used in a particular statute and where-ever they occur throughout that particular statute they have to be given the same meaning as defined and have to be understood in the same sense where-ever used in that statute. The meaning given to such words or phrases is limited to that particular act only and cannot always be extended to defend the same words or phrases used in another Statute unless the two Statutes are made for the similar purposes[1].

History of Legislation.—It is not correct to refer to a particular speech for the purposes of construing an Act but there is no harm if one goes through them for a proper understanding of the circumstances under which a particular enactment was made[2].

Res Judicata.—The principle of *Res Judicata* does not apply in the field of taxation and the taxing officer is not bound to take the same view as in the previous year of assessment[3]. Every year is a separate proceeding. But if no new facts go against the assessee, the taxing officer on principles of natural justice should not reopen the question and should also not go behind the decesion of a court of law in which particular points touching the assessee have been settled[4].

Double Taxation.—Where the legislation has not clearly laid down, there can be no double taxation *i. e.*, the subject can not be taxed twice. If a subject earns Rs. 600, in a year and gives it to his son for clothing, the income of Rs. 600, can, if at all, be taxed only in the hands of that subject and not in the hands of his son because there is only one passage but if that subject pays these Rs. 600 to some one else who has rendered some service to him, the sum enters another passage, in another form of income and can again be taxed.

Priority in realising tax.—The Government has priority over all unsecured creditors, for realising or collecting the arrears of tax, but in case where a person has declared himself as bankrupt or where a company has gone under liquidation, the priority exists only if the order of assessment was passed before the petition for insolvency was presented or before the order for winding up was given. If that is not so the Government will be on equal footings with the other creditors and will have to take its rateable share[5].

Knowledge of other branches of law.—In dealing with the Expenditure Tax Act successfully it is very necessary that one has acquired a good knowledge of a number of other branches of law, such as Income Tax Act, Transfer of Property Act, Indian Registration Act, Law of Trusts, The Law of Domicile, Law of Contract, Sale of Goods Act, and rules about the making of gifts under Hindu and Mohammadan

1. Tulsiram Shaw vs. R. C. Pat. Ltd. 89 Cal. L. J. 129.
2. Narasarapa Elic Crop. Ltd. vs. The State of Madras A. I. R. 1951 Madras 977.
3. Laxmi Narain vs. C. I. T. C. P. and Berar 3 I. T. C. 269.
4. Tribune Trust Lahore vs. C. I. T. Punjab 1944 I. T. R. 370, 385.
5. Governor General-in-Council vs. Sargodha Trading Co. Ltd., ; I. L. R. 1943 Lah. 706; 1943, I. T. R. 368, 372.

Law because a reference to most of these has been made in different sections of the Expenditure Tax Act 1957. It will be easier to handle the problems that you will have to face while conducting cases under this Act. Most of the Sections of this Act are based on different sections of the Indian Income Tax Act of 1922, so to handle problems on Expenditure Tax, it is necessary to master the sections of the Income Tax Act.

History of Expenditure Tax and Wealth Tax.—The Government of India have been taping different resources for financing the second five year plan when in the summer of 1955 *Dr. Kaldor*, Reader of Economics in the University of Cambridge visited India to take part in a seminar of Economics, organised by Bombay University at Poona. The then Finance Minister availed of this opportunity and requested this economist to make an investigation of the Indian Taxing strucutre. In the middle of January 1956 *Dr. Kaldor* took up this work and after about ten weeks submitted the report in which he suggested the levy of the following taxes :—

A net Wealth Tax, Expenditure Tax, a Gift Tax, and the Capital Gains Tax. The last tax was being levied in India in the year 1946 but since the revenue yield was little and difficulties many, so as a matter of policy, it was abolished.

American experience of 30 years has shown that 3/4th of these Capital Gains are subsequently lost. The Board of Inland Revenue, in U. K. estimated collection of about 75 Crores per year as a long term yield. In India where the intensity of economic activity is much less than in U. K. it cannot be expected that it would give better yield but any way this tax has been reintroduced in this country and it is expected that the revenue yield by this may go up to 100 crores.

Gift Tax —Gift Tax may be introduced next year. According to the suggestion of the English Economist the tax on gifts shall be payable by the recipients of the gifts and the rate will depend on the total wealth received. Gifts in excess of Rs. 10000 for any single recipient will be taxable. Where the net wealth of the recipient is below 1 Lakh the rate of tax suggested is 10 per cent and in other cases 15 to 18 per cent. He expects that this tax will yield a revenue of obout 30 crores.

Wealth Tax.—Wealth Tax and Expenditure Tax have already been introduced and as stated before there will be a lot of administrative difficulties in making valuations, taking returns from persons for assessment and then collecting the taxes. In filing the returns the fundamentals of privacy of life will be effected. In 1919 and then again in 1951 Great Britain considered the idea of introducing Wealth Tax but finally it was abandoned, looking to the expenditure on collection and valuation. This tax was levied in Japan but was finally abolished and at present there are just a few small countries of the world like, Sweden, Denmark and Netherlands etc. which have some sort of wealth tax, but in these countries the Income Tax rates are marginal and are much less than ½ those prevailing in India. The rate of tax proposed was ½ per cent to 1½

per cent in the case of individuals and Hindu undivided family and ½ per cent. in the case of Companies. A net wealth upto a limit of Rs. 1 Lakh was to be exempted.

EXPENDITURE TAX

"Expenditure Tax".—It is a quite new tax which is not being levied in any part of the world. *Dr. Kaldor* the originator of this tax claims that it will lessen tax evasion. He says "Expenditure is a better index of taxable capacity, than income. Once the fundamental principal is recognised that a nation's Capital should not be allowed to devindle ..... ." "He also feels that the expenditure cannot be concealed while, it is not so with the income. This tax is good for inducing economy in personal expenses among well-to-do-people. It is a novel idea of *Dr. Kaldor* wherein, personal expenditure in excess of Rs. 10,000 per adult per annum was proposed to be taxed, on a progressive scale, on a systematic slab system, the rate of tax varying from 25 per cent to 30 per cent. This tax is to apply to a person who has a total income exceeding Rs. 60,000.

The two Bills were referred to the Select Committee for making suitable changes on the disputed items, such as exemption from the perview of the proposed wealth tax, personal effects, such as live-stock, furniture, clothing and house-hold utensils, 50 per cent reduction in the proposed rate of Wealth Tax on Non-Indian investors who are not resident in India, extention of wealth tax holidays to new Companies for the first 5 years or more. Similarly a number of modifications in the Expenditure-Tax were suggested. It was proposed to delete the limit of Rs. 60,000 (which is now (Rs. 36,000) laid down in the proviso of clause 3 of the Bill so that the expenditure on personal consumption the basis of became taxation. Some of the other changes proposed were making provisions for religious and charitable commitments, granting of extra exemption allowance to non-residents for expenditure abroad.

Finally both the Bills "Wealth Tax" and "Expenditure Tax" after being thoroughly discussed in the Select Committee became regular Act in the month of September, 1957.

Wealth tax is to be levied from 1st April, 1957 and thus the first assessment in this case is to be made for the year 1957-58 on the accounting year ending on or before 31st March, 1957. On the other hand Expenditure Tax is to be levied from 1st April, 1958. The first assessment shall be made for the year 58-59, *i. e.*, for the accounting year ending on or before 31st March, 1958. The detail of rates is given at the end of both the Acts in the Schedules.

THE EXPENDITURE TAX ACT, 1957

CHAPTER I

PRELIMINARY.

1. Short title, extent and commencement.--

(1) This Act may be called the Expenditure-tax Act, 1957.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on the 1st day of April, 1958.

Commentary

SYNOPSIS

Title.
Extent.
Andaman and Nicobar.
Jammu and Kashmir.
Tribal and Scheduled Areas.
Commencement.

Title.—The title of the Act is Expenditure Tax Act, 1957. This only throws light upon the scope of the Act. The meaning of the different sections of the Act cannot be controlled, enlarged or retained by the title[1]. It can just help in giving a dim picture of the things to come. The name suggests that the expenditure is to be taxed, details of which shall follow.

Extent.—This Act shall be applicable to the whole of India; except the State of Jammu and Kashmir. Article 1 of the Constitution of India defines the Indian territory. It declares that India shall be a Union of States, and the territories as sepecified in the first Schedule.

(*a*) Such other territories as may be acquired.

Thus the different States of the Union are—Andhra Pradesh, Assam, Bihar, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Orrisa, Punjab, Rajasthan, Uttar Pradesh, West Bengal and Jammu and Kashmir.

The Union territories are—Delhi, Himanchal Pradesh, Manipur, Tripura. The Andman and Nicobar Islands, and the Laccadive, Minicoy and Hmindivi Islands.

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1. Sage vs. Eicholz (1919) 2 K. B. 171.

Under the powers derived from Articles 2 and 3 of the Constitution of India new States have been formed according to the provisions of the S. R. Act and are the territories of India.

Andaman and Nicobar.—The application is subject to the powers of the President to amend or repeal the Act. This power to President is given under Article 245 (2) of the Constitution.

Jammu and Kashmir.—For the State of Jammu and Kashmir only such laws are applicable which are extended to the State by the President in exercise of his powers under Article 370 of the Constitution of India.

Tribal and Scheduled Areas.—For the Tribal Areas of Assam and the Scheduled Areas else where see Article 244 (1) and 244 (2) of the Constitution.

Commencement.—This Act of the Parliament received the assent of the President on 17th September, 1957*. Usually an Act comes into force on the date it is passed or from the date expressly provided in the Act[1]. It can never have a retrospective effect unless there is a clear mention of the same in the body of the Act. In this it is specified that this Act will come into force on the 1st day of April, 1958.

2. Definitions.—In this Act, unless the context otherwise requires :—

(*a*) "Appellate Assistant Commissioner" means a person empowered to exercise the functions of an Appellate Assistant Commissioner of Expenditure tax under section 8 ;

(*b*) "Appellate Tribunal" means the Appellate Tribunal appointed under section 5A of the Income-Tax Act ;

(*c*) "assessee" means an individual or Hindu undivided family by whom Expenditure tax or any other sum of money is payable under this Act, and includes every individual or Hindu undivided family against whom any proceeding under this Act has been taken for the assessment of his Expenditure ;

(*d*) "assessment year" means the year for which tax is chargeable under section 3 ;

*Published in the Gazette of India Extraordinary Part II Section 1 dated the 18th September, 1957, page 407.

1. Delhi Cloth and General Mills Co. vs. Commissioner of I, T. Punjab 1928 P. C. 242, 21 T. C. 439.

(*e*) "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 ;

(*f*) "Commissioner" means a person empowered to exercise the functions of a Commissioner of Expenditure tax under section 9 ;

(*g*) "dependent" means—

(*i*) where the assessee is an individual, his or her spouse or child wholly or mainly dependent on the assessee for support and maintenance ;

(*ii*) where the assessee is a Hindu undivided family –

(*a*) every coparcener other than the *karta*; and

(*b*) any other member of the family who under any law or order or decree of a court, is entitled to maintenance from the joint family property ;

(*h*) "expenditure" means any sum in money or money's worth, spent or disbursed or for the spending or disbursing of which a liability has been incurred by an assessee, and includes any amount which under the provisions of this Act is required to be included in the taxable expendtiure ;

(*i*) "Expenditure-tax Officer" means the Income-tax Officer authorised to perform the functions of an Expenditure-tax Officer under section 7 ;

(*j*) "Income-tax Act" means the Indian Income-tax Act, 1922 ;

(*k*) "Income-tax Officer" means a person appointed to be an Income-tax Officer under Income-tax Act ;

(*l*) "Inspecting Assistant Commissioner of Expenditure tax" means a person empowered to exercise the functions of an Inspecting Assistant Commissioner of Expenditure-tax under section 10 ;

(*m*) "prescribed" means prescribed by rules made under this Act ;

(*n*) "previous year" in relation to any assessment year, means the previous year as defined in clause (11) of section 2 of the Income-tax Act if an assessment were to be made under the said Act for that year .

Provided that where in the case of an assessee there are different previous years under the Income-tax Act for different sources of income the previous year shall be that previous year which expired last ;

(*o*) 'taxable expenditure'' means the total expenditure of an assessee liable to tax under this Act.

SYNOPSIS

In this Act.
Appellate Assistant Commissioner.
Appellate Tribunal.
Section 5A of the Income Tax Act.
Assessee.
Individual.
Hindu Undivided Family
By whom Expenditure Tax or any other sum of money is payable.
Proceeding taken.
Assessment.
Assessment year.
Board.
Commissioner.
Income Tax Officer.
Dependant.
Co-parcener.
Expenditure.
Income Tax Officer.
Inspecting Assistant Commisstoner of Expenditure Tax.
Prescribed.
Previous year.
Sub-clause (1) (a).
Sub-clause (1) (b).
Sub-clause (1) (c).
Sub-clause (2) (i) of 2 (11).
Theory discussed in Dr. Kaldor's

2. Definitions. "In this Act, unless the context otherwise requires, —

Commentary

'In this Act'.—The definitions given in this Act are always supplimentry to the definations given in the General Clauses Act except in cases where they are clearly so explained as to override them. These definitions are to be used in interpreting the Act, rules and also the notifications.

Clause (*a*) "Appellate Assistant Commissioner" means a person empowered to exercise the functions of an Appellate Assistant Commissioner of Expenditure-tax undersection 8;

Commentary

(*a*) **Appellate Assistant Commissioner.**—He will be an authority empowered by the Central Board of Revenue, to hear appeals against the orders or assessments as prescribed in section 21 of this Act, of such classes of aggrieved persons as the Board may direct. Their areas of work will be defined. The word 'empowered' suggests that such work will be taken from some officers already in service and most probably from Appellate Assistant Commissioners of Income-tax.

Clause (*b*) "Appellate Tribunal" means the Appellate Tribunal appointed under section 5A of the Income-tax Act";

Commentary

'Appellate Tribunal'—It is a body consisting of Judicial and accountant members appointed by the Central Government in accordance with section 5 A of the Indian Income-tax Act. This body will hear appeals filed against the orders of the Appellate Assistant Commissioner of Expenditure Tax[1], under section 22 of this Act. Section 5-A of the Income Tax Act runs as follows :—

Section 5A of the Income Tax Act [Appellate Tribunal].—"(1) The Central Government shall appoint an Appellate Tribunal consisting of as many persons as it thinks fit to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of judicial members and accountant members as hereinafter defined.

(3) A judicial member shall be a person who has for at least ten years either held a civil judicial post or been in practice as an advocate of a High Court, and an accountant member shall be a person who has for at least ten years been in the practice of accountancy as a Chartered Accountant under the Chartered Accountants Act, 1949 (XXXVIII of 1949) or a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant ;

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by the sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appoinment to the Tribunal.

(4) The Central Government shall ordinarily appoint a judicial member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

(6) Save as hereinafter provided, Bench shall consist of one judicial member and one accountant member.

1. See section 22 of Expenditure-tax Act, 1957.

Provided that the President or any member of the Tribunal specially authorised in this behalf by the Central Government may sitting singly dispose of anv case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Income-tax Officer in the case does not exceed Rs. 15,000.

Provided further that the President may, for the disposal of any particuler case, constitute a Special Bench consisting either of two judicial members and one accountant member or one of judicial member and two accountant members.

(7) If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the places at which the Benches shall hold their sittings".

Clause (c) "assessee" means an individual or a Hindu undivided family by whom Expenditure tax of any other sum of money is payable under this Act, and includes every individual or Hindu Undivided Family against whom any proceeding under this Act has been taken for the assessment of his expenditure".

Commentary

'Assessee'.—Assessee for this Act are :

(1) An Individual or, (2) a Hindu Undivided Family,

(*i*) By whom Expenditure tax is payable,

or

(*ii*) any other sum is payable under this Act ; and

(*iii*) also an individnal or Hindu Undivided Family against whom assessment proceeding have been started for the assessment of his expenditure.

'Individual'.—By individual it should not be understood that it refers only to a human being. It has a wide meaning and includes units also made up of a group of persons[1]. This includes a corporation made

1. C. I. T. vs. Salem District Urban Bank, 1940 I. T. R. 269; Mian Channu Factories Union vs. C. I. T. 1936 1. T. R. 203; *In re*, Ramratan Das and Madan Gopal, 1935 1. T. R. 183; *Contra* C. I. T. vs. Ahmadabad Mill Owners Association 1939 I. T. R. 369.

under the Statutes such as a University or a Bar Council[1]. The trustees of a trust taken together are also individuals as decided in the case of *Currimbhoy Ebrahim Baronetey Trust*. An individial is a taxable unit in this Act as mentioned in charging section 3.

Hindu Undivided Family.—A Hindu Undivided Family is made up of all persons lineally decended from a common ancestor and includes their wives and married daughters while a coparcenary is different from it. It is narrower body consisting of those only who acquire by birth an interest in the joint or coparcenary property[2]. The widow of a male member who receives maintained is a member of such family. Privy Council decided that the pharse "Hindu Undivided Family" wherever used in the Statute covers all the Schools of Hindu Law in respect of this and it was not correct to restrict its meaning only to and Hindu Coparcenary[4]." A female may also be a member of a joint Hindu family. The Privy Council also decided that it would not be in consonance with the ordinary notions or with a correct interpretation of the *Mitakshera Law* to hold that the property received by a man from his father belongs to a Hindu undivided family by the Simple reason because he has a wife and a daughter[5]. If a Hindu died leaving a son whose mother and sister were alive such a son will be assessed as an individual only if the father was governed *Mitakshera Law*[6]—It can be though of a joint Hindu family with only one male surviving member if there are other members entitled to maintenance from the estate[7], but in such a case the property will be said to belong to the sole serviving male member and he will be assessed as an individial[8]. The rate of expenditure tax for an individual or a Hindu undivided family is the same, ranging from 10 per cent to 100 per cent on taxable expenditure.

By whom Expenditure-Tax or any other sum of money is payable —The words "by whom ... payable" indicate that it is the liability to pay

1. C. I. T. vs. Bar Counsil 1943 I. T. R. 1.

2. 5 I. T. C. 484 affirmed on other points by P. C. in 1934 I. T. R. 148.

3. Channan Devi *In re*, 1944 I. T. R. 153, 158; Bhagwati vs. C. I. T. 1941 I. T. R. 31, 38 affirmed in 1947 I. T. R. 409 (P. C.)

4. Kalyanji Vithaldas vs. C. I T. 1937 I. T. R. 90; C. I. T. vs. Lakshmi Narayan, 1935 I. T. R. 367, on other point reversed by P. C. in 1937, I. T. R. 416 and Khetramohan vs. C. I. T. (1951) 20 I. T. R. 423; affirmed in S. C. Kishetra mohan—Sanyasi Charan Sadhukhan 1953) 24 I. T. R. 488.

5. Kalyanji Vithaldas vs. C. I. T. 1937 I. T. R. 90; C. I. T. vs. A. P. Swami Gomedali 1937 I. T. R. 416; (It was decided before Hindu Woman's Right to Property Act).

6. C. I. T. vs. Vednath Singh, 1940 I. T. R. 22.

7. Vedathani vs. C. I. T. 1933 I. T. R. 70 (S. B.); Bhagwati vs C. I. T. 1941 I. T. R. 31 (affirmed in) 1947 I. T. R. 409 (P. C.); Nathu Sao vs. C. I. T. 1939 I. T. R. 463.

8. C. I. T. vs. Swamy Govedali 1937 I. T. R. 416 (P. C.) revising C. I. T. vs. Lakshminarayan 1935 I. T. R. 367.

which determines as to who is the assessee and as such unless the liability is determined by the Expenditure-tax Officer under Section 15 (3) he cannot be an 'assessee' but only a prospective assessee. In Section 13 (2) the word used is not 'assessee' but 'any person' which shows that the Legislature have deliberately avoided the use of the word 'assessee'. But this argument does not hold good if the words 'payable and liable' are interchargeable, as perhaps thought of, because liability does not depend on assessment. This is fixed by Sections 3 and 4 of the Act and the amount actually payable is determined by Section 15. Thus there are two kinds of persons who could be called assessees, (*i*) those by whom expenditure tax or any other sum is payable under this Act whether any proceeding against them has been actually taken or not, (*ii*) those against whom any proceeding under this Act has been taken whether they are liable to pay this tax or not.

Proceeding taken.—If a notice is given it means the proceeding is taken[1].

The legal representative of a deceased person is also an assessee under Section 18 of this Act. Before 1933 under Income-tax Act till Section 24B was not introduced there was a conflict if a legal representative of a deceased could be an assessee[2].

'Assessment'.—The word 'assessment' means the procedure of finding out the liability of tax; sometimes it only means levying tax. It is in short the computation of expenditure tax and the assessee is a person whose liability to Expenditure Tax is being computed.

Clause (*d*) "Assessment year" means the year for which tax is chargeable under section 3;

Commentary

(d) **Assessment year.**—According to the charging section 3 of the Act for every financial year a tax will be levied on an individual or a Hindu undivided family, on the expenditure incurred by them in that previous year which correspond to the financial year in question. The first financial year for which this tax will be charged is 58–59 ordinarily in cases where the accounts are kept up from 1st April to 31st of March the previous year for 58-59 will be the period begining from 1st April 1957 and ending on 31st March 1958. Where for on assessee there are more than one previous years for the previous year shall be that previous year which expired last.

There could be three kinds of years according to Income-tax Act and a mention of such years is also made in this Act. These are:—

(1) Assessment year.

(2) Previous year.

(3) Corrective year.

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1. Dialdas Parmanand Kriplani vs. P. S. Talwar and others (1956) S. T. C 675.

2. Govind Saran vs. C. I. T. 2 I. T. C. 480; Oudh Court said that he could be treated as an assessee; but Bombay and Calcutta High Courts took opposite view in cases of C. I. T. vs. Ellis Reid 5 I. T. C. 100, and Mitchell vs. M Neell and Co., 2 I. T. C. 298.

The profits accrue in a particular year and are taxed in the next year. The year in which this income is received is called the earning year or the previous year and the year in which such income or wealth is taxed is the assessment year or the year of assessment. This is often called as the 'tax year' also. Thus the year for which the tax is paid is the assessment year and the year on the income or assets of which the tax is levied is the 'Previous Year'. Details of previous year will be found in Clause (II) of Section 2 of the Income-tax Act and have been explained under Section 2 (n) of this Act.

The 'Corrective Year' is the year in which the tax levied in the 'tax year' is often corrected under Section 34 of the Income-tax Act and can be well corrected in the same way under section 16 of this Act.

In cases falling under Section 16 (*a*) it can be corrected any time within eight years and in cases falling under Section 16 (*b*) any time within four years of the end of that assessment year.

Clause (*e*) Board.—"Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924".

Commentary

This Board was constituted under the Central Board of Revenue, Act, 1924. This Act was enforced to provide for the setting up a Central Board of Revenue and to amend certain enactments for the purpose of conferring and imposing duties on the said Board. This Board called Central Board of Revenue works under the control of the Central Government in the exercise of powers and performance of its duties as are entrusted to it by the Government. It may consist of one or more members appointed by the Central Government.

Clause (*f*) Commissioner.—"Commissioner" means a person empowered to exercise the functions of a Commissioner of Expenditure Tax under section 9."

Commentary

It shows that the Commissioners of Income Tax Department will be empowered to exercise the functions of Commissioner of Wealth-tax. The word used is 'empowered' and not 'appointed.'

Clause (*g*) "dependent" means—

(*i*) where the assessee is an individual, his or her spouse or child wholly or mainly dependent on the assessee for support and maintenance ;

(*ii*) where the assessee is a Hindu undivided family—

(*a*) every coparcener other than the *karta* ; and.

(*b*) any other member of the family who under and law or order or decree of a court, is entitled to maintenance from the joint family property ;

Commentary.

Dependent.—(*i*) In case the assessee is an individual there are two persons who will be called his or her dependent.

(*a*) His or her spouse (wife or husband) wholly or mainly dependent on the assessee for support and maintenance.

(*b*) His or her child wholly or mainly dependent on the assessee for support and maintenance.

(*ii*) In case the assessee is a Hindu Undivided Family—

(*a*) The coparcener of a Hindu Undivided Family other than the *Karta*.

(*b*) Any other member of the family, who is entitled to maintenance from the joint family property. He should be so entitled under any law or order on a decree of a court.

There are two conditions before a spouse or a child can be called a dependent.

The first condition is that the spouse or the child should be dependent for support and maintenance both and secondly the support can be either wholly or mainly. If the spouse or child depend wholly for support and maintenance he or she will not look for any kind of help from any one else and if the spouse or child is mainly dependent he must be having other sources also from which he or she gets support and maintenance but the main or the Chief part is played by the assessee. The use of the word 'or'[1] means that even if the spouse or child is being supported and maintained only mainly even then he will be called a dependent.

Coparcener.—Coparcener is a person who acquired by birth an interest, in the joint or coparcenary property. A Hindu coparcenery is a smaller body than a joint Hindu family, A joint Hindu Family is made up of persons lineally descended from a common ancestor and includes their wives and unmarried daughters.

Clause (*h*) "expenditure" means any sum in money or money's worth, spent or disbursed or for the spending or disbursing of which a liability has been incurred by an assessee, and includes any amount which under the provisions of this Act is required to be included in the taxable expenditure" ;

1. Chawan Devi In re 1944. I. T. R. 153, 158, Bhagwati vs. C. I. T. 1941 I. T. R. 31, 38, affiend 1947 I. T. R. 9 (P. C.).

Commentary

Expenditure.—Expenditure has been defined as—

(1) any sum in money, or

(2) Any sum in money's worth,

(*a*) spent or disbursed

(*b*) for the spending or disbursing of which a liablity has been incurred by the assessee, and also

(3) Any amount which is required to be included in the taxable expenditure according to section 4 of the Act.

Clause (*j*) Income-Tax Act.—"Income-tax Act" means the Indian Income-tax Act, 1922."

Commentary

It is an Act taxing the income of persons and has been ammended from time to time. There have been a lot of amending Acts in it since 1922 but the most important was that of 1936.

Clause (*k*) Income-tax Officer.—"Income-tax Officer" means a person appointed to be an Income-tax Officer under the Income-tax Act".

Commentary

Income Tax Officer.—He is a person appointed with the said disignation under Section 5 of the Indian Income-tax Act.

Clause (*l*) "Inspecting Assistant Commissioner of Expenditure-tax" means a person empowered to exercise the functions of an Inspecting Assistant Commiseioner of Expenditure-tax under section 10' ;

Commentary

He will be a person so empowered by the Commissioner of Expenditure-tax to work as such and will be under Commissioner', most probably such powers will be given to the present Inspecting Assistant Commissioners of the Income-tax department.

Clause (*m*) "prescribed" means prescribed by rules made under this Act ;

Commentary

Prescribed.—In section 41 rule making powers are given to central Board of Revenue for carrying out the purpoes of this Act.

Clause (*n*) "previous year" in relation to any assessment year, means the previous year as defined in clause (11) of section 2 of the Income-tax Act if an assessment were to be made under the said Act for that year" ;

Commentary

Previous year.—This clause prescribes that for the purposes of this Act the definition of the previous year be taken from clause (11) of section 2 of the Indian Income-tax Act but in cases where an assessee has different previous years for different sources of income under the income-tax Act, that previous year will be taken for this purpose which expired last.

Section 2 (11) of Indian Income-tax Act.

'Previous Year' means—

(*i*) in respect of any separate source of income, profits and gains—

(*a*) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then, at the option of the assessee, the year ending on the date to which his accounts have been so made up ;

Provided that where in respect of a particular source of income profits, and gains an assessee has once been assessed, or where in respect of a business, profession or vocation newly set up an assessee has exercised the option under sub-clause (*c*), he shall not, in respect of that source or, as the case may be, business, profession or vocation, exercise the option given by this sub-clause so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose ; or

(*b*) in the case of any person, buriness or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf ; or

(*c*) where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (*b*), or, if the accounts of the assessee are made up in respect of a period not exceeding twelve months from the date of the setting up of the business, profession or vocation and the case is not or one for which a period has been determined under sub-clause (*b*) then, at the option of the assessee the period from the date of the setting up of the business, profession or vocation to the date to which his accounts have been so made up ;

Provided that when the date to which the accounts have been so made up does not fall between the setting up of the business, profession or vocation and the next following 31st day of March inclusive, it shall be deemed that there is no previous year for the said assessment year and the previous year which would otherwise have been determined according to the option exercised by the assessee be deemed to be the previous year for the next succeeding assessment year ;

(*ii*) in respect of the share of the income, profits and gains of a firm where the assessee is a partner in the firm and the firm has been assessed as such, the period as determined for the assessment of the income, profits and gains of the firm".

The tax is levied for each financial year, on the previous or, the accounting year. The financial year starts from the 1st April and finishes on 31st of March. Thus ordinarily where the accounts are being kept up from April to March if the assessment for the year 1957–58 is being made the tax will actually be levied on the income accrued in the year 1956–57. 'Previous year' has been considered by the Supreme Court when *Mahajan J*[1], said that "the expression previous year substantially means an accounting year comparised of a full period of twelve months and usually corresponding to a financial year, preceding the financial year of assessment. It also means an accounting year comparised of a full period of twelve months adopted by the assessee for maintaining his accounts but different from the financial year and preceding a financial year. For purposes of the charging section of the Act unless otherwise provided for it is co-related to a year of assessment immediately following it, but it is not necessarily wedded to an assessment year in all cases and it cannot be said that the expression 'previous year' has no meaning unless it is used in relation to a financial year. In a certain context it may well mean a completed accounting year immediately preceding the happening of a contingency."

In cases where an assessee has different 'previous years' for different sources of income, the income of the different previous from different sources should be combined to find out the total income. The meaning of this sub-section make it quite clear that except in case of clause (*b*) the different previous year must end with or within the financial year next preceding the assessment year.

The word "Sources"[2], said above in the sources of income has no legal concept but something practical or real source of income.

Sub-clause (*i*) (*a*).—Previous year according to this section is the year just preceding the financial year but in cases where the assessee has made up his accounts for 12 months of the year begining from any date that suited him he is given an option either to elect the next preceding financial year on the period of twelve months for which he has made up his accounts. This option[3], must be exercised by giving a statement in writing to the officer. Mere production of the books of accounts for that year which is other than financial year will not do.

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1. C. I. T. vs. Srinivasan and Gopalan (1953) 23 I. T. R. 87, 99.
2. Rani Amrit Kunwar vs. C. I. T. 1946 I. T. R. 561, 582.
3. Bisheshwar Singh vs. C. I. T. (1955) 27 I. T. R. 376.

The proviso to this sub-section lays two conditions—(1) if one has been assessed for a certain source of income, or (2) where a business has been newly set up and the assessee has exercised his option under Clause (*c*) the assessee in respect of that source cannot change his previous year even if no assessment is made[1], except on the permission of the Incomar Tax Officer who may lay down such conditions as he thinks fit.

Sub-Clause (*i*) (*b*).—In certain cases the assessee keeps up his accounts in such a way that his accounting year terminates after the end of the financial year preceding the assessment year, *e.g.* an assessee's accounting year starts from 15th of May, 1956 and ends on 14th of May, 1957. Then for the income that has accrued to him in this year can not be assessed for 57–58 because his accounting year ends after 1st of April, 1957 or ends within the year 57–58. His assessment would lag behind by a year and he will be assessed in the financial year 58–59 for that income. To remove such difficulties the Central Board of Revenue or the Commissioner of Income-tax is authorised to determine any period, his previous year as such for this he may either fix (*i*) a period which would have exceeded 12 months or (*ii*) a period which even does not end within the previous financial year but ends into the assessment year[3].

Sub-Clause (*i*) (*c*).—Where an assessee starts work in the financial year preceding the assessment year there may be the following previous years :—

(1) The period from the first day of starting the work to 31st day of March next following.

(2) The period as fixed by the department under Sub-Clause (1) (*b*).

(3) But where the accounts are made up for a period not exceeding 12 months and neither end on 31st March nor terminate after the end of the preceding financial year *i. e.*, the case does not fall under clause (1)(*b*) and the last day of accounts kept terminates after 31st of March next following the starting of work there will be no previous year. An example will make the things clear. Suppose vocation, business or profession starts on 1st July, 1955 and the accounts are kept upto 31st of December 1955, then if the assessee wants that the period from 1st July, 1955, to 31st December, 1955 be taken as his previous year, this would be accepted and would be taken as the previous year of 56–57 in which he will be taxed, but if the accounts are made up for a period exceeding 12 months he can not take the advantage of the latter part of Sub Clause (*c*) or of the proviso to it[3].

The accounting year begins from the day the business is set up or started and not from the day the actual sale begins or actual work commences[4].

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1. General Companies Corporation Ltd. In re (1954) 26 I. T. R. 316, 323.
2. Nanak Chand Hateh Chand vs. C. I. T., 2 I. T. C. 167.
3. General Commercial Corp. Ltd. In re (1954) 26 I. T. R. 316.
4. Western India Vegetable Products Ltd., vs. C. I. T. (1954) 26 I. T. R. 151.

Sub-Clause (ii) of Section 2 (II)[1].—According to this Sub Section as regards to partners share in the profits of a firm, the previous year will be the same as that of the firm, if the assessment of the firm has been completed and in case where the assessment of the firm is not made and the partner is to be assessed for his share in the firm the previous year of the partner would be according to the provisions of Sub-Clause (1). With regard to the personal income the partner can have a different previous year than that of the firm.

Clause (*o*) "Taxable expenditure" means the total expenditure of an assessee liable to tax under this Act.

Commentary

Taxable Expenditure.—It is that amount of expenditure of an assessee on which the expenditure tax is to be levied according to the Act.

Theory discussed in Dr. Kaldor's light.—There are two methods by which the tax charges are levied ordinarily in case of income or property taxes. One could be a tax on the gross amount and the other on the net amount. In case of Expenditure Tax, on principal, the tax could be levied either on the gross amount before the taxes are deducted or on the net amount after duely deducting the taxes that have been paid. The only difference will be of the method of calculation. It will be seen that a tax charged gross at the rate of A will correspond to a tax levy on the net amount at the rate of $\frac{A}{1-A}$, therefore where a levy is of 25 per cent on gross amount it will amount to a levy of 33⅓ per cent on the net, thus 50 per cent gross levy to 100 per cent net and so on. This shows that the tax removes more than half of the gross chargeable amount before tax.

Thus in the case of Expenditure Tax the only proceduce that could be logical and may apply to common sense is to treat the payment of tax as a charge which should be excluded from the calculation of the assessee's personal expenditure. If this is not deducted or excluded the common man will feel that he is paying a tax on tax, though really the two method in the eyes of an economist come to the same. It is definite that in net method the calculating process will be a bit tedious, but even then it will be more rational to adopt this method for calculating tax on expenditure.

Dr. Kaldor says that "Nevertheless I would personally opt for the net system though for reasons that are more psychological and political than economic or technical in character. The implication of a net system of charging would be far better understood by the public, and the fairness of the system as between the different tax payers would be more immediately evident. Also-and this perhaps is more important-The net method of charging would be made conducive to fostering a sense of responsibility both in the Legislature and the electorate." Thus the net system has been adopted in India also on his recommendations, as will be seen from the charging section 3 of the Act.

1. See Income Tax Act, Sec. 2 (11).

CHAPTER II

CHARGE OF EXPENDITURE-TAX AND ASSETS SUBJECT TO SUCH CHARGE

3. Charge of expenditure-tax.—(*1*) Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1958, a tax (hereinafter referred to as expenditure-tax) at the rate or rates specified in the Schedule in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year :

Provided that no expenditure-tax shall be payable by an assessee for any assessment year if his income from all sources during the relevant previous year as reduced by the amount of taxes to which such income may be liable under any other law for the time being in force does not exceed rupees thirty-six thousand.

(*2*) For the removal of doubts, it is hereby declared that nothing contained in this Act shall require the inclusion in the taxable expenditure of an assessee for any year of expenditure for the spending or disbursing of which a liability has already been incurred and which has been included in the taxable expenditure for any earlier year.

Commentary

SYNOPSIS

1. *Scope.*
2. *Sub-section* (*2*).
3. *'Shall be charged'.*
4. *Principle of charge.*
5. *Unit which assessed*
   (*i*) *Individual.*
   (*ii*) *Hindu undivided family ; and*
6. *Expenditure incurred in the previous year*
7. *Expenditure of computation.*

Scope.—This section imposes a charge and that charge is the expenditure tax, to be levied on an individual and a Hindu Undivided family, for every financial year, in respect of the expenditure incurred by such taxable unit in previous year corresponding to the financial year in question. The first financial year for which this tax is to be levied is 58–59, as the provisions of this Act will come into force on the 1st day of April, 1958. Ordinarily where the accounts are kept up from 1st of April to 31st of March the previous year corresponding to the financial year 58–59 will be 57–58 and the expenditure incurred during this year by an individual, or a Hindu Undivided family will be subject to the levy of this tax. The rate of tax will be according to the rate or rates mentioned in the Shedule given at the end of the Act.

The proviso to sub-section (1) puts a check on the general power of charging the expenditure tax on the expenditure of every individual or a Hindu Undivided family. It lays down a condition that this tax will be levied only on that individual or Hindu Undivided family whose income from all sources during the relevant previous year as reduced by the amount of taxes to which such income may be liable under any other law for the time being in force, exceeds rupees thirty-six thousand which means that in all other cases where this amount does not exceed rupees thirty-six thousand such an individual or a Hindu Undivided family will not be taxed.

Sub-section (2).—This sub-section makes it clear that for any year of expenditure, no amount, for the spending or disbursing of which a liability has already been incurred and which has been included in the taxable expenditure for some earlier year, shall be included in the taxable expenditure of the assessee.

'Shall be charged.'—Liability to tax does not depend on the assessment. In an Income tax case where the charging section 3 is also similar to this section—Privy Council said—"The rate of tax for the year of assessment may be fixed after the close of the previous year and the assessment will necessarily be made after the close of that year but the liability of the tax arises by virtue of the charging section alone, and it arises not later than the close of the previous year though qualification of the amount payable is postponed"[1].

Principles of charge.—1. The Expenditure-tax will be charged for every financial year starting on and from first day of April, 1958.

2. The tax is to be levied on the expenditure, computed according to the provisions of this Act.

3. The tax is to be charged at the rate or rates as given in the Schedule.

4. This charge is on (i) an individual, (ii) Hindu Undivided Family.

5. The expenditure which is taxed is that of the previous year and of the assessment year.

UNIT WHICH ASSESSED

Individual.—'Individual' means ordinarily a man but in the eyes of the law it has a wide meaning. University or a Bar Council being a Corporation so created by the Statute is an individual[2]. Trustees of a trust created under the Baronetcy Act were taken to be individual[3].

1. Wallence Bros and Co. Ltd. *vs.* C. I. T. 1948 I. T. R. 240, 244.; Chutturam *vs.* C. I T., 1947, I. T. R. 302, 308.; Whitney *vs.* I. R., 10 T. C. 88, 110.; Chautturam Horilram Ltd. *vs.* C. I. T. (1955) 27, I. T. R. 709, 716 (S. C.); In re Binar Mica Concern Ltd. (1951) 19 I. T. R. 553.

2. C. I. T. *vs.* Bar Council 1943, I. T. R. 1.

3. Currimbhoy Ebrahim Baronetcy Trust *vs.* C. I. T. 448. affirmed on other Points by P. C. in 1934 I. T. R. 148.

While computing the Expenditure of an individual care should be taken to include all the items given in section 4 of the Act.

A slab system of taxing the expenditure has been laid down and this tax ranges from 10 per cent. to 100 per cent. On the expenditure which does not exceed Rs. 1,000 the rate is 10 per cent. only, which exceeds Rs. 10,000 but does not exceed Rs. 20,000 the rate is 20 per cent, which exceeds Rs. 20,000 but does not exceed Rs. 30,000 the rate of tax is 40 per cent. which exceeds Rs. 30,000 but does not exceed Rs. 40,000, the rate is 60 per cent. which exceeds Rs. 40,000 but does not exceed Rs. 50,000, the late is 80 per cent, which exceeds Rs. 50,000 the rate is Rs. 100 per cent.

Hindu Undivided Family.—This is a separate entity[1], in the eyes of this Act for taxtion. It is different from partnership because this arises out of status and the partnership out of contract made. Hindu undivided family once assessed as such would continue to be assessed in the same manner even after the partition untill an order is passed to that effect by the Expenditure Tax officer under secton 19. The expression Hindu Undivided Family (H.U.F.) is used in a wider sense and includes not only one School of Hindu Law all. The decision of the Privy Council in *Kalyanji Vithaldas* vs. *C.I.I.*[2] is remarkable on this point. A Joint Hindu Family is made up of persons lineally descended from a common ancestor and covers under it their wives and unmarried daughters, but a Hindu Coparcenary is a narrower body including such persons who aquire an interest by birth in the Co-parcenary or joint property[3]. Where a man receives a property from his father and his family consists of his wife and his daughters, the property does not belong to a Hindu Undivided Family[4]. In a case where father and son are the only male members of a Hindu Undivided Family and father dies leaving the widow, then the assessment regarding the joint family property[5], and the property left by the father[6] will be on the Hindu Undivided Family consisting of mother and the son as the properties will be H. U. F. properties and that will be a separate taxable unit under the Act. The rate of tax is the same as in the case of individuals and ranges from 10% to 100% according the slabs mentioned in Schedule.

Expenditure incurred in the previous year.—Section 3 shows that the charge is on the expenditure of previous year and not that of the assessment year or financial year. As this section is anologous to section 3

1. Bijoy Singh Dudhuria vs. C. I. T. 1933 I. T. R. 135, 137 (F. C.) (Similar law of Income Tax Case)

2. (1937) I. T. R. 90.

3. Chatman Devi In re 1944 I. T. R. 153, 158 ; Bhagwati vs. C. I. T. 1941 I. T. R. 31, 38 (affirmed in 1947 I. T. R. 409 (P. C.).

4. Kalyanji Vithaldas vs. C. I. T. 1937, I. T. R. 90, 95/6 (P. C.)

5. C. I. T. vs. Lakshmanan Chettiar 1940 I. T. R. 545.

6. The decision of Rangoon High Court in C. I. T. vs. Vednath Singh 1940 I. T. R. 222 ; Superseded in India due to Hindu Women's Rights toproperty Act 1937.

of the income sax Act help may be taken of the cases[1] : Which was discussed in 1948 and other cases referred in this connection. Since the expenditure of the previous year is to be taxed the facts as existed in that previous year will be taken into account and the law as existed in the financial year or assessment year will be applied unless otherwise stated[2].

Expenditure and computation.—While computing the expenditure for any year. The following rules should be applied :—

(1) "The correct method of approach is to treat nothing as being charged to tax untill by the process of computation is laid down by the Act[3]".

(2) "The scheme is that whenever one finds an exemption or exclusion from payment of tax, the exemption or exclusion also operates for the purpose of computing the total income. Not only is the sum liable to tax but it is also not to form part of the total income for the purposes of determining the rate. When the legislature intends that certain sums though not liable to tax, should be included in the total income it expressly so provides[4].

Such words in the charging section are "subject to the provisions contained in this Act".—

(1) It will be seen that certain items are exempt from charge and are also required to be excluded from the taxable expenditure.

(2) Certain other items of expenditure are exempt from taxation but they are to be included in the assessees total expenditure.

(3) There are certain other items which may themselves be exempt from tax, may yet form a part of assessees total expenditure which will determine the rate of tax applicable to the chargeable expenditure.

It means that the total expenditure of an assessee is not necessarily wholly subject to tax.

In connection with the method of computation and calculation to be followed there in yet another judgment among Income-tax cases which will throw sufficient light on the subject and will be of great benefit to the readers——judgment of Rankin C. J.[5]. The words in the charging section are—

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1. Wallance Bros and Co. Ltd. vs. C. I. T. 1998 I. T. R, 240, 244 (P. C.); Maharaja of Pithapuram vs. C. I. T. (1945) I. T. R. 221 (P. C.); C. I. T. vs. Polsen 1945 I. T. R. 384, 386 ; C. T. I. vs. Tehri Garhwal State 1934 I. T. R. 1, 7 (P. C.). C. I. T. v. Srinivasan and Gopalan 1953 23, I. T. R. 87, 93 (S. G.); Biharilal Mullick vs. C. I T. 2, I. T. C. 328 ; Kuruppiyah Karagani vs. C. I. T. 3 I. T. C. 282, 285.

2. C. I. T. vs. Isthmian, (1951) 20 I. T. R. 572, 577 (S. C.).

3. Per Stone C. J. *In re* Kamdar 1946 I. T. R. 10, 21.

4. Per Chagla C. J. C. I. T. *vs.* Raiji 1949 I. T. R. 180, 185.

5. *In re* Beharilal Mullick, 2 I. T. C. 328.

"Subject to the other provisions contained in this Act" and the definition of "taxable expenditure" and expenditure in sub-section (*o*) and (*h*) of section 2 respectively of this Act show some way for computation too.

Thus full effect should be given to the tax exemptions given in the provisions of the Act and the computation should be in accordance with the provisions of this Act after giving due allowances and deductions.

4. Amount to be included in taxable expenditure. – Unless otherwise provided in section 5, the following amounts shall be included in computing the expenditure of an assessee liable to tax under the Act, namely : –

(*i*) any expenditure incurred, whether directly or indirectly by any person other than the assessee in respect of any obligation or personal requirement of the assessee or any of his dependents which, but for the expenditure having been incurred by that other person, would have been incurred by the assessee, to the extent to which the amount of all such expenditure in the aggregate exceeds Rs. 5,000 in any year.

(*ii*) any expenditure incurred by any dependant of the assessee for the benefit of the assessee or of any of his dependants out of any gift, donation on settlement on trust or out of any other source made or created by the assessee, whether directly or indirectly.

Explanation.—For the removal of doubts it is hereby declared that nothing contained in this section shall be deemed to require the inclusion in the expenditure of the assessee of any expenditure incurred by any other person for or on behalf of the assessee by way of customary hospitality or which is of a trivial or inconsequential nature.

Commentary

This section directs to include the following amounts in the expenditure of an assessee liable to tax under this Act, unless they are declared exempted from Expenditure tax, under section 5 of this Act

(*i*)—(*a*) Any expenditure whether directly or indirectly incurred by any person in respect of any obligation or personal requirement of the assessee.

(*b*) Any expenditure whether directly or indirectly incurred by any person is respect of any obligation or personal requirement of any of the dependents, of the assessee.

Such expenditures shall be included in computing the expenditure of the assessee under two conditions—

(*a*) only if these are such amounts as would have been incurred by the assessee, had such other person not incurred such amounts for the assessee.

(*b*) only when such amount incurred is more than Rs. 5,000.

Under such conditions only that much of the amount will be included in computing the expenditure of an assessee liable to tax, as such expenditure in aggregated exceeds Rs. 5,000 in a year.

(*ii*) (*a*) Any expenditure incurred whether directly or indirectly by any dependent of the assessee for the benefit of the assessee.

(*b*) Any expenditure incurred whether directly or indirectly by any dependent of the assessee for the benefit of any of his dependents.

But such amounts shall be included as said above only if they are spent :—

(*a*) out of the gift, donation or settlement on trust created by the assessee.

(*b*) out of any other source made or created by the assessee.

Explanation.—The above said expenditure as incurred by any other person for or on behalf of the assessee will not be included in computing the expenditure of the assessee if—(1) they have been incurred by way of customery hospitality.

or

(2) they are of a trivial or inconsequential nature.

1. Customery—According to use or want[1]—'Want is habit'.
2. Hospitality—Friendly welcome and entertainment of guests[1].
3. Consequential is casual, following as a result[1].

5. Exemption from expenditure-tax in certain cases.—No expenditure-tax shall be payable under this Act in respect of any such expenditure as is referred to in the following clauses, and such expenditure shall not be included in the taxable expenditure of an assessee :—

(*a*) any expenditure, whether in the nature of revenue expenditure or capital expenditure, incurred by the assessee wholly and exclusively

1 See Chamber's Dictionery.

for the purpose of the business, profession, vocation or occupation carried on by him or for the purpose of earning income from any other source;

(*b*) any expenditure incurred by the assessee, or on his behalf by his employer, wholly and necessarily in connection with the discharge of duties arising out of the assessee's employment;

(*c*) any expenditure incurred by or on behalf of the assessee wholly and necessarily in connection with the discharge of any duties assigned to him by the Government.

(*d*) any expenditure incurred on behalf of the assessee by way of any such passage concessions as are referred to in clause (*via*) of subsection (3) of section 4 of the Income-tax Act;

(*e*) any expenditure incurred by the assessee in connection with the acquisition of any immovable property or in the construction, repair, maintenance or improvement of any immovable property belonging to him ;

(*f*) any expenditure incurred by the assessee by way of investment in deposits, loans, shares and securities, or in bullion, precious stones or jewellery ;

(*g*) subject to such rules as the Central Government may make in this behalf any expenditure incurred by the assessee in the purchase of products of any cottage industry in India, books or any work of art ;

(*h*) any expenditure incurred by the assessee by way of contribution as capital to a firm or other association of persons in consideration of a share in the profits of the firm or association ;

(*i*) any expenditure incurred by the assessee by way of repayment of loan or other borrowing, or by way of payment of interest thereon, not being interest on any loan or other borrowing utilised for incurring expenditure liable to tax under this Act ;

(*j*) any expenditure incurred by the assessee by way of, or in respect of, any gift, donation or settlement on trust or otherwise for the benefit or any other person ;

(*k*) any expenditure incurred by the assessee for paying premiums in respect of any policy of insurance—

(*i*) on the life of the assessee or any of his dependants ; or

(*ii*) for the education or marriage of any of his dependants ; or

(*iii*) for insuring the health of the assessee or covering any accident which may befall him or any disability to which he may become subject ; or

(*iv*) covering any property (other than aircraft, motor vehicles or other transport vehicles) against loss or damage due to fire or theft ;

(*l*) any expenditure incurred by the assessee in the purchase or maintenance of live-stock ;

(*m*) any expenditure incurred by the assessee for any public purpose of a charitable of religious nature.

Provided that this clause shall not apply in the case of any expenditure incurred outside India for any such purpose unless the Board, having regard to the circumstances relating thereto, otherwise directs ;

(*n*) any expenditure incurred by the assessee out of any allowance in the nature of an entertainment allowance referred to in clause (*ii*) of sub-section (2) of section 7 of the Income-tax Act in respect of which income-tax is not payable ;

(*o*) any expenditure incurred outside India—

(*i*) from any source, by an assessee who is not a citizen of India and is not resident in India ; or

(*ii*) from any income or capital, accrued or realised outside India by an assessee who is not a citizen of India but is resident in India or, being a

citizen of India or a Hindu undivided family, is not resident or not ordinarily resident in India ;

Explanation.—For the purpose of this clause, an individual or a Hindu undivided family shall be deemed to be not resident or not ordinarily resident in India during any year, if in respect of the corresponding assessment year he or it, as the case may be, is not resident or not ordinarily resident in India within the meaning of the Income-tax Act ;

(*p*) any expenditure incurred by way of contribution to a provident, thrift or superannuation fund ;

(*q*) any expenditure, not being personal expenditure, incurred by the assessee out of the sums, if any, guaranteed or assured by the Central Government as his privy purse for meeting any expenses in respect of—

(*i*) the maintenance of any member of his retinue and the payment of salaries, allowances and pensions, to members of his staff or to persons who have retired from his service ;

(*ii*) the maintenance of any one building declared by the Central Government as his official residence under paragraph 13 of the Merged States (Taxation Concessions Order, 1949, or paragraph 15 of the Part B States (Taxation Concessions Order, 1950 ;

(*iii*) the maintenance of any conveyances of animals for official purposes ;

(*iv*) the maintenance of any relatives dependant on him for maintenance ;

(*v*) the performance of any official ceremonies ;

which expenses, having regard to the status of the assessee or to the practice of the family to which the assessee belongs, have to be or are being incurred by him and are, in the opinion of the Expenditure-tax Officer, reasonable.

Provided that the Expenditure-tax Officer shall not fix the amount of such expenditure without the previous approval of the Commissioner.

(r) any expenditure incurred by the assessee or any of his dependants, and where the assessee is a Hindu undivided family by any member of the family, in connection with any election to any legislative, municipal or other public authority in India for which the assessee, dependant or member, as the case may be, is a candidate, to the extent to which such expenditure is not in excess of the limits, if any, fixed under any law for the time being in force relating to such elections.

Commentary

SYNOPSIS

Scope.—According to this section the expenditures given below will be exempt from tax and will also not be included in the taxable expenditure of the assessee.

(*a*) (1) Any revenue expenditure or capital expenditure incurred by the assessee wholly and exclusively for the purpose of the business, profession, vocation, or occupation carried on by him.

(2) Any revenue expenditure or capital expenditure incurred by the assessee wholly and exclusively for the purpose of earning income from any other source.

Revenue Expenditure and Capital Expenditure.—Ine the case of a hotel keeper the cost of crockery, pots or pans is a revenue expendi-

ture[1]. The cost of raw material used for the manufacture of a thing is a revenue expenditure. If a bank for opening new branches incurres an expense by way of salaries etc. this will be a revenue expenditure[2]. In a sugar mill some boilers were replaced by the new boilers of the same type, it was held that the purchase, erection and fitting of the new boilers was a revenue expenditure[3].

The cost of putting up a plant and erecting factory is capital expenditure[4]. The cost of improvement of a property, but not repairs is a capital expenditure[5]. If a copyright[6] or a patent right is purchased it is capital expenditure. A company paid a certain amount annually for wagons on hire—purchase basis. It was held that the payment made towards the price of the wagons finally to be purchased was capital expenditure and the amount paid towards the hire of wagons was revenue expenditure[7].

Wholly and exclusively.—The expenditure may necessarily be for that purpose but this will not fulfil the condition unless it is only wholly and exclusively for that purpose The case of[8] ; and others referred below in this connection will explain the meaning.

'For the purpose of the business'.—This phrase has been explained by *Lord Devy* who said that the phrase means—"for the purpose of enabling a person to carry on and earn profits in the trade[9].

Rowlatt J. interprated the phrase as " for the purpose of keeping the trade going and of making it pay[10]".

BUSINESS, PROFESSION, VOCATION :—

Profession.—*Mr. Sceiutton L. J.* has defined 'Profession'—He said " 'Profession' involves the idea of an occupation requiring either purely intellectual skill, or if any manual skill, as in painting and sculpture, or surgary, skill controlled by the intellectual skill of the operator, as distinguished from an operation which is substantially the production or sale, or arrangements for the production or sale, of commodities[11]".

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1. Hyam vs. I. R. 14 T. C. 479, 486.
2. Hindustan Commercial Bank *In re* (1952), 21 I. T. R. 353.
3. C. I. T. vs. Sri Rama Sugar Mills Ltd. (1952), 21 I. T. R. 191.
4. Smith vs. Washington Brake Co. 2 T. C. 357.
5. Henriksen v. Graften Hotel 1943 I. T. R. Suppl, 10 ; Munn Crosmen and Paulin Ltd. vs. Compton 28 T. C. 410 ; William Lawrie vs. I. R., 34 T. C. 20.
6. Hiralal Phool Chand vs. C. I. T. 1947 I. T. R 205 ; Minsararam Co. Ltd. vs. C. I. T. 6, I. T. C. 65.
7. Drangavil Coal Co. Ltd., vs. Francis, 7 T. C. 1.
8. Craddock vs. Zero Finance Co. Ltd. 27 T. C 267, 287 (H. L.)

   Bantleys Stokes and Lowless vs. Becoson 33 T. C. 491, 506 (C. A.) ; Ciba Dyers Ltd. vs. C. I. T. (1954) 25 I. T. R. 102, 107 ; Eastern Investments Ltd. vs. C. I. T. (1951) 20 I. T. R. 1.
9. Strong and Co. vs. Woadfield 1906 A. C. 448, 452 13, 5 T. C. 215, 220; Morgon vs. Tate and Lyle Ltd. (1954) 26 I. T. R. 195, 200 (H. L.) 35, T. C, 367.
10. R. vs. Anglo Brewing Co. Ltd. 12 T. C. 803, 813.
11. I. R. vs. Maxse 12 T. C. 41, 61 (C. A.); Curric vs. I. R. 12 T. C. 245, Stanwill and Co. vs. C. I. T. (1952) 22 I. T. R. 316 (Auctjoners).

Vocation.—Vocation was said to be analogous to 'calling' a word of wider signification, meaning the way in which a man passes his life[1]".

-In Income Tax Law business is defined as "any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture[2]".

Business is used in wider sense than profession could be used and so vocation has still wider scope than business. Thus what is not profession may merge into business and what is not business may merge into vocation[3].

Clause (b)—It is under three conditions that such an expenditure will be exempt. The conditions are :—

(1) The expenditure should have been incurred by the assessee or on his behalf by his employee.

(2) That it should have been wholly and necessarily incurred in connection with the discharge of his duties

(3) Such duties should arise out of the employment of the assessee.

Vaisey J. in the case of *Lamax vs. Newton*[4] said—"The provisions of this clause are notoriously rigid, narrow and restricted in their operation."

Expenses on going to the place where the duties are to be performed are not expenses in connection with the discharge of duties[5] the leading case on this point is *Rickett vs. Colqhoun*[6].

The expenses of a commercial traveller in going about on his business are expenses in connection with the discharge of his duties[7].

Here the word 'necessarily' has been used and due attention should be given to the use of this word while inteprating problems falling under this clause.

Clause (c).—There is not much difference between this clause and the one discussed above except that the command in this case is not from the employer but from the government.

Clause (d).—Any expenditure incurred on behalf of the assessee for passage money or the amount paid as fee or concessional

1. Patridge vs. Mallandine (1886) 18 Q. B. D. 276, 2 T. C. 179.
2. See section 2 (4) of Income Tax Act.
3. Cf. *in re*, Lala Indra Sen, 1940 I. T. R. 187, 204 Upper India Chamber of Commerce vs. C. I. T, 1947 I. T. R. 263.
4. Lamax vs. Newton 34 T. C. 558, 561, Raskeus vs. Bennett. 32 T. C. 129.
5. Blackwell vs. Mills 1947, I. T. R. Suppl. 63 ; Andrews vs. Astley 8 T. C. 589; Fredson vs. Glyn-Thomas 8 T. C. 302 ; Rewel vs. Director of Elworthy Bros. and Co. Ltd. 3 T. C. 12 ; Cook vs. Knott 2 T. C. 246.
6. 10 T. C, 118 (H. L.).
7. Nolder. vs. Waltas 15 T. C. 380.

passage to any employee for himself, his wife and children for their proceeding to home out of India. This concession is given under Sec. 4(3) (*via*) of the Indian Income Tax Act.

Clause (e)—Immovable property.—Under section 3 of the General Clauses Act Immovable property is said "to include, land, benefits to arise out of land and things attached to earth or permanently fastened to anything attached to earth."

For the word "Land" used in its definition, Law Laxicon says – "Land not only comprehands the soil but every species of ground on earth, meadows, pastures, woods, moors, water mashes, furze and earth ; it includes houses, mills, cattles, buildings, besides an indefinite extent upwards it extends downwards to the globies centre."

The Transfer of Property Act says "Immovable property does not include standing timber, growing crops or grass."

'Attached to the earth'.—Means—

(*a*) rooted in the earth, as in the case of trees and shrubs ;

(*b*) embedded in the earth as in the case of wall or building;

(*c*) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

Clause (f) and (g)—Precious stones.—Costly stones studded in the ring or other ornaments.

Mark of Art.—This includes Flower Pots, Wodden goods with carvings on, Painting, etc.

The goods mentioned in clause (*g*) will be exempt according to the rules as the Central Government may make in this connection.

Clause (h).—The investment towards the capital of a firm or association of persons in consideration of a share in the profit.

Firm.—In the eyes of the Income Tax Law there are two kinds of firms (1) Registered—which is not assessed but the partners of such firm are assessed individually. (2) Unregistered firm. In this case the levy of the tax is on the firm.

Association of persons.—This is also a separate entity in the eyes of the Income Tax Law. In this case either the association is assessed as such or the members are individually taxed in respect of their respective shares in the Association.

Clause (i)—The expenditure incurred by the assessee in connection with repayment of loan or other borrowing or by way of payment of interest. But it should not be interest on such loans or borrowing which would be utalized for incurring such expenditures as are taxable under this Act.

Clause (j)—(1) Any expenditure incurred by the assessee by way of or in respect of any gift, donation or settlement on trust.

(2) Any expenditure incurred by the assessee for the benefit of any other man.

Clause (k)—This is the amount given towards the premium for ensuring the things-given in this clause.

Clause (l)—Live stock—domestic animals, especially Horses, cattle, sheep and pigs.

Clause (m)—Any expenditure incurred by the assessee for any public purpose of a charitable or religious nature but if such expenditure for such purpose is incurred out of India will not be exempt unless specially permitted by the C. B. R.

Public Purpose of a charitable or religious nature—*Lord Wright* has said about charity—"charity is a word of art, of precise and technical meaning.[1]" In another case *Rowlett J.* said—"It is much easier to say that a certain case does not come within the doctrine of charity then to define the limits of the doctrine affirmatively[2]."

Lord Russel has said that there can not be charitable purpose without a public purpose. He said "Matters have been stretched in favour of charities almost to bursting point[3]." The purpose in order to be charitable should be for the benefit of the community and not to the benefit of a particular person[4]. "There is no such thing as a private charitable trust[5]. In the Income Tax Law the public purpose has also been mentioned, and those purposes are, relief for the poor, education and medical relief. The relief for the poor, education and medical relief should also be for the public purpose[6].

Religious Nature.—Religious nature has not been defined anywhere. It means the advancement of religion, worship of idols[7], celeberation of Hindu festivals[8], establishment of mosques[9], maintaining of Khankhas[10], looking after the missions[11]. Public Religious purpose is *prema facie* a charitable purpose[12].

Clause (n).—Entertainment allowance is referred to in clause (*ii*) of sub-section (2) of section 7 of the Income Tax Act. This is an

1. National Antivivi Section Society vs. I. R. 1948 I. T. R. Suppl. 1, 4 (H. L.).
2. Anglow Swedish Co. vs. I. R. 16 T. C. 34, 38.
3. In re Grove Grandy (1929) 1 Ch. 557, 582.
4. William Trustees vs. I. R. 1948 I. T. R. Suppl. 41, 50 (H. L.); Trusties of Gordhandas etc. Trust vs. C. I. T. (1952) 21 I. T. R. 231.
5. C. I. T. vs. Jamal Mohammad Sahib, 1941, I.T.R. 375, 384; Chaturbhuj Vallabbdas vs. C. I. T. 1946 I. T. R. 144, 148.
6. Mercantile Bank of India (Agency) Ltd. In re, 1942 I. T. R. 512, 524.
7. Bhupti Nath vs. Ramlal, I. L. R. 37 Cal. 128; Kushal Chand vs. Mahadevgiri (1875) 12 Bom. (H. C.) 214.
8. Anand Charan vs. Kamla Sundari A. I. R. 1936 Cal. 405.
9. Mohammadan Law by Mulla See 13th Edition P. 164.
10. Mohammad Kazim vs. Syed Ali I. L. R. 12 Pat, 288.
11. Special Comrs. vs. Pemsel 3 T. C. 53.
12. White vs. White (1893) 2 Ch. 41 (C. A.).

entertainment allowance which was being allowed to the employees and was not taxed under section 4(3) (*vi*) of the Income Tax Act but it was ammended in the year 1955 and now it is being allowed to those only who were getting such allowance from their present employers even before 1st of April, 1955. A new man will not get such exemption. The maximum amount exempted under this head is 75,000 or 1/5th of the remuneration of that employee whichever is less. The remmuneration does not include, any special allowance, benefit or other requisites.

Clause (o).—Any expenditure outside India is exempt under this clause provided—

(*i*) It is spent by an assessee who is not a citizen of India and is "not resident in India" the source from which the expenditure has been met out may be any.

(*ii*) (*a*) The expenditure is from any income or capital accurred or realised out of India.

(*b*) It is spent by an assessee who is not a citizen of India but is resident in India.

(*c*) It is spent by an assessee who though a citizen of India or Hindu Undivided family is not resident or not ordinarily resident in India.

Explanation.—This explanation is for the two phrases used in this clause (1) not resident (2) not ordinarily resident in India. They have been explained in detail in sections 4A and 4B of the Indian Income Tax Act.

Income accured out of India.—In a case where a firm has a Head Office in India and a branch office in a foreign country if the branch dispatches some goods from abroad to head office in India at prices higher than the cost of the goods, the profit shown thus is not the accrual of profits out of India and is neither a remittance of profit to the head office in India[1].

Non resident or not ordinarily resident.

In the case of an individual or Hindu Undivided Family, let us see what is "not resident in India" and what is "resident but not ordinarily resident in India" according to Indian Income Tax Act. Section 4A and 4B of the Income Tax Act which define the 'residence' and "ordinary residence" are reproduced below.

"**4-A. Residence in the taxable territories**—For the purposes this this Act[1]—

(*a*) any individual is resident in the taxable territories in any year if he—

(*i*) is in the taxable territories in that year for a period amounting in all to one hundred and eighty-two days or more ; or

1. Ram Lal Bachairam vs. C. I. T. (1951) 19 I. T. R. 246; C. I. T. vs. Annamalai Chettiar (1941) I. T. R. 663.

(*i*) maintains or has maintained for him a dwelling place in the taxable territories for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in the taxable territories for any time in that year ; or

(*iii*) having within the four years preceding that year been in the taxable territories for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in the taxable territories for any time in that year otherwise than on an occasional or casual visit ; or

(*iv*) is in the taxable territories for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in the taxable territories during that year is likely to remain in the taxable territories for not less than three years from the date of his arrival ;

(*b*) a Hindu undivided family, firm or other association of persons is resident in the taxable territories unless the control and management of its affairs is situated wholly without the taxable territories ; and

(*c*) a company is resident in the taxable territories in any year (*a*) if the control and management of its affairs is situated wholly in the taxable territories in that year, or (*b*) if its income arising in the taxable territories in that year, exceeds its income arising without the taxable territories in that year account not being taken in either case of income chargeable under the head, "Capital gain."

"**4-B. Ordinary residence**—For the purposes of this Act[1]—

(*a*) an individual is 'not ordinarily resident' in the taxable territories in any year if he has not been resident in the taxable territories in nine out of ten years preceding that year or if he has not during the seven years preceding that year been in the taxable territories for a period of, or for periods amounting in all to, more than two years ;

(*b*) a Hindu undivided family is deemed to be ordinarily resident in the taxable territories if its manager is ordinarily resident in the taxable territories ;

(*c*) a company, firm or other association of persons is ordinarily resident in the taxable territories if it is resident in the taxable territories".

Section 4-A lays down rules for knowing the residence of taxable entities, while Section 4B describes what is ordinary residence. According to the provisions of the Income-tax Act first it should be found out if the assessee is a *resident in India*. It is after this that it may be ascertained whether he is *ordinarily resident*. This shows that there is difference between a "Resident" and an "Ordinary resident" in the eyes

1. Indian Income Tax Act of 1922.

of the Income tax law. The taxable entities according to this law have been broken up into three categories :—

(1) "Resident and ordinarily resident" which only means a resident.

(2) "Resident but not ordinarily resident"

(3) "Not resident"

The word 'resident' has been defined in section 4A, of the Income Tax Act, 1922 with the help of residence. Those who are not residents according to the test of residence laid down in section 4A of I. T. Act are "Non-residents". For income tax purposes a foreign is also taxed by the test of his residence and not nationality[1].

The question of residence has to be ascertained in respect of each year and this should be for previous year for which the income is to be assessed, and similar is the case in wealth tax as seen in this section of the Act, because, the words "during the year ending on the valuation date" have been used, here too.

Having found out the residence of an assessee for a year that cannot be applied for every, year , because one who has been an ordinary resident in one year may be a " not resident" in another year. If he remains out of India throughout the whole of that year. Looking above to all the four sub-clauses of Sec. 4A (*a*) in the case of an individual it seems that his presence in India for some time is very necessary, during the accounting year. If he is out of India for the whole of that particular year, he will be non-resident. But if he stays in India for the days required and the stay is in confirmity with the provisions of the sub-section 4A (*a*), he will be a resident even if he has not stayed for long together and has moved from hotel to hotel during his stay[4]. If one stays in an anchored ship in the territorial waters of India, it is his stay in India[4]. Thus there are persons who have only one domicile but may be resident in two different countries in the eyes of this law[5].

Sub-Clause (i) of sec. 4A (a) of I. T. Act.—Stay of 182 days in an aggregaet alone, in a particular year will make an individual a resident[6].

Sub Clause (ii) of sec. 4A(a) of I.T. Act.—This Sub-Clause lays down ditions for an individual :—(*i*) Assessee should be in the taxable territories

1. Per Lord Wrenbury, in Brandbury vs. English Sewing Cotton Co. 8 T. C. 481, 515.

2. Narasimbha Rao Bahadur vs. C. I. T. 1950 I, T. R. 18-E, Lysaght vs. I. R. 13 T. C. 511, 516.

3. Lysaght vs. I. R. 13 T. C. 511 (H. L.).

4. Brown vs. Burt 5 T. C. 4667.

5. Leven vs. I. R. 13 T. C. 885, 505 (H. L.). Thompson vs. Bensted 7 T. C. 137, 144 ; Lloyd v. Sulley 2 T. C. 37, 41 ; Cooper vs. Cadwalader 5 T. C. 101, 107.

6. (If a fraction of a day will be taken to be full day) See Wilkie vs. I. R. 32 T. C. 495.

for some time in that particular year, a few hours stay will also suffice, and (*ii*) Assessee should maintain or has maintained for him a dwelling place in the taxable territories for a period or periods amounting in all to, 182 days or more in that year. The dwelling place to be so maintained or already maintained should be not for his family members or his friends but for himself[1]. His stay at the residence of a relative of his or his parents will not serve the purpose unless he can prove that he has a legal right to use this house[2].

Sub-Clause (iii) of sec. 4A (a) of I. T. Act.—It lays down clearly three conditions for an individual :—

(1) The stay of assessee in the taxable territories should be of at least 365 days in an aggregate during the course of four years preceeding the year in question.

(2) Presence in the taxable territory for any time in that year is essential.

(3) This presence should not be on an occasional or casual visit.

In computing 4 years preceeding the year in question, the year is to be calculated as made up of 12 calander months[3].

It is not only the duration of the visit but also the nature of his visit which is to be considered. The word "Occasional or Casual" have importance. This suggests that such visits are not regular and are also not for a specific purpose or according to any plan of the assessee, such visits may be for meeting a relation or friend or for medical treatment[4].

But if the assessee visits India every year for game, business, or to spend his winters here ; it is within the conditions laid down by this Sub-Clause of I. T. Act[5].

Sub-Clause (iv) of sec. 4A(c) of I.T. Act.—In case of new-comers to India two conditions have been laid down :—(*i*) The individual is in the taxable territory in the relevent year and (*ii*) The Income Tax Officer is satisfied that he is likely to remain in taxable territories for not less than three years from the date of his arrival.

1. Shiva Narain Sharma *vs.* C. I. T. 1950 I. T. R. 844 ; Pickles *vs.* Fonlsham 9 T. C, 261, 275

2. Zackariah Sahib *vs.* C. I. T. (1952) 22 I. T R. 359.

3. Savumiamurthy vs. C. I. T. 1946 I. T. R. 185.

4. Per Malik C. J. in Shamnath Mushran *vs.* C. I. T. 1950 I. T. R. ; Sayed Abdul Cader *vs.* C. I. T. 1950 I. T. R. 310, 316*; I. R. V. Combe 17 T. C. 405, 410; Cooper *vs.* Cadwalder 5 T. C. 101, 109; Lysaght *vs.* I. R. 13 T. C. 511, 517, 525.

5. Reid *vs.* I. R. 10 T. C. 673, 680 ; Cooper *vs.* Codwalder 5 T. C. 101; Lysaght *vs* I, R. 13 T. C. 511 (M. L.).

Section 4-A (b) of Income Tax Act.—This is about Hindu Undivided Family, firm or association of persons but for this Act we are only concerned with Hindu Undivided family because that is a taxable entity, and not the firm or association of firms in this Act. A Hindu Undivided Family is said to be resident in India if the control and management of its affairs is situated wholly or partly in India. In case the control and management is situated wholly out of India, the family will be non-resident. The residence of the family can not be determined only by the residence of one member of that family only unless this residence goes to effect the control and management of the family[1]. A Hindu Undivided Family is resident in the taxable tarritory unless it is yroved that the control and management of the family is wholly situated out of India .

There is difference between the right or power to control and to manage and the *de-facto* control and management. It is the *de-facto* control that determines the place[2].

In a case where a Hindu Undivided Family is carrying on business abroad and if the *Karta* visits India for a short while, it would not mean that the control of the family's foreign business was in India during that time[4].

As said before, this section defines an ordinary residence. First of all it should be found out if the assessee is a resident and having found this, the second step is to find out if he, or she of H. U. F. is an ordinarily resident. There is nothing like "*not resident and not ordinarily resident*" in the Income tax Act[5]. It is only an Individual and a Hindu Undivided Family which can be "resident and not ordinary resident".

Sub-Clause (a) of Sec. 4-B of I. T. Act.—There are two parts to this Clause. Part one says that if in nine out of the ten years next preceeding the relevent accounting year, the assessee is non-resident in India he will be "not ordinarily resident". The second part lays down that if out of the *seven years* next preceeding the relevent accounting year the assessee in physically present for a period not exceeding two years, he will be called "not ordinarily resident".

Sub-Clause (b) of Sec. 4-B of I.T. Act.—For finding out whether a Hindu Undivided Family is "Not ordinarily resident" in India it is only to be found out if the manager is "not ordinarily resident".

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1. Narsimha Rao Bahdur vs. C. I. T. (1950) I. T. R. 181, 192 ; C. I. T. vs. S. P. K. A. R. . Family 1941 I. T. R. 685 ; B. R. Naik vs. C. I. T. 1945 I. T. R. 124, 130 ; Tollipatigala Estate vs. C. I. T. (1950) I. T. R. 320, 325.

2. Subbaiyya Chettier vs. C. I. T. (1951) 19 I. T. R. 168.

3. B. R. Naik vs. C. I. T. (1945) I. T. R. 124, 127. 128 after reward (1946) I. T. R. 334 ; C. I. T. vs. Estate (1251)20 I. T.R. 412, 420 ; Narsimba Rao Bahadur vs. C. I. T. (1950) I. T. R. 181.

4. C. I. T. vs. Gangabishan Mohan Mal (1945) I. T. R. 20; C. I. T. vs. Paluni-appa Chettiar (1955) I. T. R. 269; Subbayya vs. C. I. T. (1951) 19 I. T. R. 168, 172 (S C,); Narasimba Rao Bahadur vs. C. I. T. (1950) I. T. R. 181.

5. Bava vs. C. I. T. (1955) 27 I. T. R. and 63.

Sub-clause (p)—For Provident Fund see Provident Fund Act 1925.

Superannuation.—Superannuate—means—

To impair or disqualify by living beyond the years of service or by old age.

'To pension on account of old age or infirmity'[1]. Superannuation is thus the state of being superannuated.

Sub-clause (q)—It is covered under this section if it fulfills the following conditions—

(*i*) (1) If it is any expenditure incurred by the assessee, and

(2) It is not a personal expenditure of the assessee, and

(3) If it is spent out of the sums granted or assured by the Central Government of his *privy purse* for meeting any expenses in respect of the following :—

(*a*) For the maintenance of any member of his retinue and

(*b*) For the payment of salaries, allowances and pensions to members of his staff or to persons who have retired from his service.

(*ii*) If it is in respect of—the maintenance of one out of the many buildings declared by the Central Government as his official residence[2].

(*iii*) If it is in respect of the maintenance of any conveyances or animals for official purposes.

(*iv*) If it is in respect of the maintenance of any relatives dependent on him for the purpose of maintenance.

(*v*) If it is in respect of the performance of any official ceremonies.

The above said all such expenses will be exempted under this Section only if the Expenditure Tax Officer is satisfied and for being so satisfied he has to take into consideration the following point.

That the amounts which have to be or are being so incurred by him are reasonable, looking to the status of the assessee or looking to the practice of the family to which the assessee belongs.

If the Expenditure Tax Officer is not satisfi d with the reasonableness of the expenditure incurred, he can fix such amount but with the approval of the Commissioner ; without such approval he cannot fix such amounts because the words used are "shall not fix."

Privy Purse.—Privy is private ; pertaining to one person, and 'Privy Purse' is the purse or money for the private or personal use of the sovereign.

1. Chamber's Dictionery.

2. Declared as official residence under paragraph 13 of Merged States Taxation concessions) order 1949, or Paragraph 15 of the Part B States (Taxation Concessions) order 1950.

Retinue.—The body of retainers who follow a person of rank.

Sub-clause (r).—Any expenditure incurred for the elections will be covered under this Sub-clause if it fulfils the conditions given below :—

(1) It is incurred by the assessee.

Or

(2) It is incurred by any dependant of the assesses.

Or

(3) It is incurred by any member of the Hindu Undivided Family if the assessee is a H. U. F.,

and is in connection with the elections to any legislative, municipal or other public authority in India ;

and if (*i*) Assessee is the candidate

Or

(*ii*) Any dependent of the assessee is the candidate.

Or

(*iii*) Any member of Hindu Undivided Family is candidate where the assessee is a H. U. F., and also if—

The expenditure so incurred is not in excess of the limits, if any, fixed under any law for the time being in force relating to such elections.

6. Deductions to be made in computing the taxable expenditure. (1) The taxable expenditure of an assessee for any year shall be computed after making the following deductions and allowances, namely : –

(*a*) any taxes, including the expenditure-tax payable under this Act, duties, cesses, rates or fees paid to the Government or a local authority, but not including –

(*i*) taxes or fees in respect of any conveyance or other movable asset intended for the personal use of the assessee or any of his dependants ;

(*ii*) customs duties on, or taxes on the purchase of, articles imported or purchased for the personal use of the assessee or any of his dependants ;

(*b*) any expenditure lawfully incurred by the assessee in respect of any civil or criminal proceedings to which he is a party ;

(*c*) any expenditure incurred by the assessee—

(*i*) if an individual, in respect of his own marriage or the marriage of any of his dependants, and

(*ii*) if a Hindu undivided family, in respect of the marriage of the *karta* or any other member of the family, subject to a maximum of Rs. 5,000 for each marriage ;

(*d*) four-fifths of any expenditure incurred by way of capital expenditure on the purchase of furniture and other household goods, motor-cars and other conveyances or any other articles for the personal use of the assessee or any of his dependants :

Provided that where a deduction as aforesaid is made one-fifth of the said capital expenditure shall be deemed to be incurred by the assessee in each of the four years exceeding the previous year in which the expenditure was incurred and no deduction shall be made under this clause in the assessment for any succeeding year in respect of expenditure so deemed to have been incurred in any earlier year ;

(*e*) any expenditure incurred by the assessee on the maintenance of his parents subject to a maximum of Rs. 4,000 ;

(*f*) any expenditure incurred by the assessee —

(*i*) if an individual, in respect of his own medical treatment or the medical treatment of any of his dependants or parents, and

(*ii*) if a Hindu undivided family, in respect of the medical treatment of the *karta* or any other member of the family.

subject to a maximum of Rs 5,000 in the case of an individual or a Hindu undivided family which consists only of the *karta*, his wife and children, and Rs. 10,000 in the case of any other Hindu undivided family ;

Provided that the assessee may carry forward to the next year and the year immediately following any portion of the said sum of Rs. 5,000 or Rs. 10,000 as the case may be, unexpended during any year :

Provided further that in the case of an assessee who immediately before the commencement of this Act has been incurring a higher expenditure on the medical treatment of himself or any of his dependants or his parents, the Expenditure-tax Officer may, in any of the five years commencing from the 1st day of April, 1958, increase the allowance specified in this clause to such extent as he may think reasonable for that year, but so as not to exceed Rs. 20,000 ;

(*g*) any expenditure incurred by the assessee in respect of the education of himself or any of his dependants and where the assessee is a Hindu undivided family, of any member of the family, in any country outside India, subject to a maximum of Rs. 8,000 per year ;

(*h*) a basic allowance—

(*i*) where the assessee is an individual, of Rs. 30,000 ; and

(*ii*) where the assessee is a Hindu undivided family, of Rs. 30,000, in respect of the *karta* and his wife and children, and a further allowance of Rs. 3 000 for every additional coparcener, provided that the basic allowance for the Hindu undivided family as a whole shall not exceed Rs. 60,000 in any case ;

(*i*) any expenditure incurred by the assessee in any country outside India in any case where he is not a citizen of India but is resident in India, to the extent to which such expenditure is not admissible under clause (*c*) or clause (*e*) or clause (*f*) or clause (*g*), subject to a maximum of Rs. 10,000.

(2) If the assessee claims on or before making a return for the assessment year commencing on the 1st day of April, 1958, that instead of the deductions permissible under clauses (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*, and (*i*) of sub-section (1), the deductions and allowances permissible in his case shall be determined having regard to his actual expenditure in the last three previous years immediately preceding the previous year relevant to the assessment year commencing on the 1st day of April, 1958, then, notwithstanding anything contained in sub-section (1), instead of the deductions and allowances permissible under the clauses aforesaid, there shall, be allowed—

(*a*) a sum equal to 75 per cent. of the average annual expenditure of the assessee for the said three years computed after taking into account the exemptions mentioned in section 5 and the deduction permissible under clause (*a*) of sub-section (*1*) of this section ; or

(*b*) Rs. 75,000 ;

whichever is less.

(*3*) The limit of Rs. 75,000 referred to in sub-section (*2*) shall be progressively reduced by a sum of Rs. 5,000 every year commencing from the assessment year ending on the 31st day of March, 1960:

Provided that this sub-section shall cease to apply to an assessee in relation to and from the year in which the progressive reduction, if allowed, would have the effect of bringing the limit so reduced to a figure below the aggregate amount of the allowances and deductions permissible under clauses (*b*) to (*i*) inclusive of sub-section (*1*).

(*4*) If the assessee proves in any year that in respect of any sum out of which any expenditure incurred is chargeable to tax under this Act he has paid in any foreign country any tax under any law for the time being in force in that country relating to taxes on income, wealth or expenditure, he shall be entitled to a deduction from the expenditure chargeable to tax under this Act of that portion of the tax paid in the foriegn country as is attributable to the amount of such expenditnre.

Commentary

Scope—This section gives the deductions and allowances that are to be made for computing the taxable expenditure of an assessee for any year and such deductions and allowances are :—

(*a*) All Taxes, duties, cesses, rates or fees given to the Government or a local authority, including the expenditure tax payable according to this Act, but not including the following :—

(*i*) (*a*) The taxes and fees in respect of *any conveyance*, and

(*b*) The taxes and fees in respect of movable assets, intended for the personal use of the assessee.

Movable Assets.—Things like, cash money, bullion, jewellery, car, etc. are moveable property.

Clause (b)—Any expenditure incurred the assassee on any Civil or Criminal proceedings provided by :

and

(1) It is lawful;

(2) The assessee is a party to it.

Clause (c).—Any expenditure incurred by an assessee :—

(*i*) In case of an individual,

(*a*) in respect of his own marriage, or

(*b*) in respect of the marriage of any of the dependants of the assessee.

(*ii*) In case of a Hindu Undivided Family :—

(*a*) In respect of the marriage of the *Karta* of the H. U. F. or

(*b*) In respect of the marriage of any other member of this H. U. F.

In both the cases mentioned in (*i*) and (*ii*) the maximum expenses allowed for each such marriage, will be Rs. 5,000.

Clause (d).—4/5th of such expenditure as is incurred by way of Capital Expenditure on the purchase of things mentioned in this Clause or any other article for the personal use of the assessee or any of his dependants :

Where the above said deduction has been made, 1/5th of the above said capital expenditure shall be deemed to be incurred in each year succeeding the previous year in which such expenditure was incurred and this practice will continue for four years succeeding the previous year in question.

In each of such succeeding four years no deduction shall be made under this clause in the assessment for any such succeeding years in respect of that 1/5th of the capital expenditure which is so deemed to have been incurred in any earlier year.

House hold goods.—Goods for permanent use in the house and which are not so acquired for trade.

Personal use.—For domestic or private use different from the purpose or use of trade or profession.

Clause (e).—An expenditure amounting to not more than Rs. 4,000 spent by the assessee on the maintenance of his parents, will be covered under this Clause.

Parent.—Means Father or Mother,

Clause (f).—The following expenditures incurred by the assessee will be covered under this Clause :—

(*i*) In case of an individual—

The amount spent in respect of the medical treatment of (1) his Parents, or (2) any of his dependants, or (3) himself.

But more than Rs.15,000 on this account will not be exempt.

(*ii*) In the case of Hindu Undivided Family the amount spent in respect of the medical treatment (1) of the *Karta* of the family, or (2) of any member of the faimly.

Where the family consists of *Karta*, his wife and children the maximum amount allowed is Rs. 5,000 and Rs. 10,000 in the case of any other Hindu Undivided Family.

In the case of an individual or a Hindu undivided Family where such amount of Rs. 5,000 or Rs. 10,000 as the case may be, not expended, such portion of this amount which remains unexpended will be carried forward to the next year and then the year immediately following it.

But in case where an assessee has been incurring a higher expenditure than given in this Clause, for such purpose, in the period immediately before 1st of April, 1958, on (1) himself or (2) his/parents or, (3) any of his dependents, will be given a concesssion.

In such cases the Expenditure Tax Officer may increase the allowance specified in this Clause, to such extent as he may think reasonable for that year. He is authorised to make such increase in any of the five years commencing from the 1st day of April, 1958, but such expenditure exempted will not in any case exceed Rs. 20,000.

Clause (*g*).—In this Clause expenditure on foreign education is exempt and the maximum amount so exempt is Rs. 8,000 a year. This expenditure is exempt only if it is incurred on the foreign education out of India, (1) of himself or, (2) of any of the dependants of the assessee, and where the assessee is a Hindu Undivided Family on the foreign education, (3) of any of the members of the family.

Clause (*h*).—Basic allowance in th case of an (*i*) Individual is Rs. 30,000 and (*ii*) where an assesseee is a Hindu Undivided Family it is Rs. 30,000, where the family consists of Karta, his wife and children, and Rs. 3,000 for every additional coparcener but in any case it will not exceed Rs. 60,000.

Clause (*i*).—Where an assessee incurred an expenditure for any of the purposes mentioned in Clause (*c*) or (*e*) or (*f*) or (*g*) in any foreign country, and if that expenditure is in excess of the limits mentioned in the above said Clause, his limit of each such exemptions mentioned under such heads will be increased subject to maximum of Rs. 10,000.

Provided—

1. The assessee is not a citizen of India; but

2. He is a resident in India, and

3. That such expenditure is incurred in any country outside India.

Under Clause (*c*) the expenditure is for marriage, under Clause (*e*) it is for the maintenance of parents, under Clause (*f*) it is for the medical treatment and under clause (*g*) it is for the education abroad.

Sub-section (2) of Section 6.—This Section lays down a quick method of calculating the deductions and allowances permissible under clauses (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) and (*i*) of Section 6 of this Act. This method reduces the botheration of the officer and the assessee claims both but is applicable only if the assessee that the deductions and allowances permissible in his case shall be determined having regard to his actual expenditure in the last three previous years immediately preceding the previous year, relevant to the assessment year commencing on the first day of April, 1958. The claim for getting the allowances and deductions determined in this way should be made on or before making a return for the assessment year commencing on the 1st day of April, 1958, such choice cannot be availed of, if the claim is made after making a return.

(*a*) If such a claim is made in time then instead of finding out the deductions and allowances seperately under each Clause (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) and (*i*), a sum equal to 75 per cent of the average annual expenditure of the assessee calculated from the annual expenditure of the assessee in the last three previous years immediately preceeding the previous year relevant to the assessment year commencing on the 1st day of April, 1958, computed after taking into account the exemptions mentioned in Section 5 and the deductions permissable under Clause (*a*) of the Sub-Section (1) of this Section, is taken as the total of allowable deductions and allowances. The average annual expenditure of the assessee is computed after taking into consideration, the actual expenditure in the last three previous years, immediately preceeding the previous year relevent to the assessment year commencing on the first day of April, 1958.

(*a*) This Sub-Section lays down a limit to such allowances and deductions. According to this if the allowances and deductions as found out under Clause (*a*) are less than Rs. 75,000, that figure will be taken as the allowable allowances and deductions and if that is more than Rs. 75,000 then only Rs. 75,000 will be allowed. Thus Rs. 75,000 is the ceiling figure fixed for deductions and allowances.

Sub-section (3).—In cases where the deductions and allowances allowable under Clauses (*b*) to (*i*) of Sub-Section (1) are computed by the method given in Sub-Section (2), the cisling limit of Rs. 75,000

referred to in Sub-Section 2(*b*) is to be reduced progressively by a sum of Rs. 5,000 every year beginning from the year 59-60 and this progressive deduction will stop when the conditions given in proviso to this Sub-Section are reached.

Sub-Section (4).—This Sub-Section has been laid down to avoid double taxation and if an assessee has paid any tax in foreign countaries in respect of any sum out of which any expenditure incurred is chargeable to tax under this Act, he shall be entitled to a deduction of the tax, from the expenditure chargeable to tax. The deduction will be of that portion of the tax only as is attributable to the amount of expenditure chargeable to tax. This deduction is allowable only if the assessee can so prove.

The expenditure of an assessee is to be computed after making all the deductions and allowances given in section 6. Sub-Section (2) of this Section will not apply to the assessees who though not chargeable to tax under this Act, now may become chargeable in future, as is seen from the language of this Sub-Section. Under Sub-Section (4) of this Section the burden of proof is on the assessee to show that he has been so taxed in foreign countries and wants a relief from double taxation. If he is unable to prove so, he will not be allowed the concession given in this Sub-Section.

Burden of proof.—In case of income tax where the burden falls on the general public, the taxing authorities can tax only if they can prove that a certain person comes under that limit but where an assessee wants to avail of an exemption granted under the Statutes, the assessee has to prove that he comes under such exemptions[1].

Some times due to a thing being placed wrongly it appears that it is exempted from tax[2], while it is not so actually. The burden is always on the assessee, to prove that his income was exempt from tax being agricultural income[3], if he wants this exemption.

1. C. I. T. *vs.* Maharaja Visheshwar Singh 1935 I. T. R. 216, 219; Keren Kayameth le Jesroel Ltd. vs. I. R. 17 T. C. 27, 58 (H. L.); Manghan *vs.* Free Church of Scotland 3 T. C. 207; Madras Co-operative Bank *vs.* C. I. T. 1933 I. T. R. 158, 165; Amritsar Produce Exchange Ltd. *In re*. 1937 I. T. R. 307, 327; Lala Inder Sen *In re* 1940, I. T. R. 187, 199; Lokmanya Tilak Etc. Fund *In re*, 1942 I. T. R. 26, 33; Charuslia Dassi *In re* 1946 I. T. R. 362, 370, 376; Rani Amrit Kuwar vs. C. I. T. 1946 I. T. R. 561, 575; Beohar Singh vs. C. I. T. 1948 I. T. R. 433, 445; Sir Kameshwar Singh vs. C. I. T. (1954), 26 I. T. R. 121, 132.

2. C. I.T. *vs.* Shaw Wallance and Co. I. L. R. 59 Cal. 1343 (P. C.), Mohammad Faruq *In re* 1938 I. T. R. 1, 6.

3. Bacha Guzdar *vs.* C. I. T. (1955) 27 I. T. R. 1, 4 (S. C.); Raja Mustafa Ali Khan *vs.* C. I. T. 1948 I. T. R. 330. 335 (P. C.); I. T. C. *vs.* Maddi Vanketasubhayya (1951) 20 I. T. R. 151, 156; Sir Bijoy Chand Mehtab Bahadur of Burdwan, In re, 1940 I. T. R. 378, 380; Visheshwar Singh *vs.* C. I. T. (1954) 26 I. T. R. 573, 587.

CHAPTER III

EXPENDITURE TAX AUTHORITIES

7. Expenditure-tax Officers.—Every Income-tax Officer having jurisdiction or exercising powers as such under the Income-tax Act in respect of any individual or Hindu undivided family shall perform the functions of an Expenditure-tax Officer under this Act in respect of such individual, or Hindu undivided family.

Commentary

Expenditure tax Officer.—This section authorises the Income Tax Officers having jurisdiction and exercising power over the individual, or Hindu Undivided Family to work as Expenditure Tax Officers in respect of the units aforesaid. The Expenditure-tax Officer will be subordinate to the Inspecting Assistant Commissioner and the Commissioner of Expenditure Tax as given in Section 11. This is the lowest unit among authorities of Expenditure tax. There is nothing like Inspectors of Expenditure-tax as in Income-tax Act. In Income Tax Act also they were introduced by the Income Tax (Amendment) Act 1953.

8. Appellate Assistant Commissioners of Expenditure tax.—The Board may empower as many persons as it thinks fit to exercise under this Act the functions of an Appellate Assistant Commissioner of Expenditure-tax, and on being so empowered the Appellate Assistant Commissioners of Expanditure Tax shall perform their functions in respect of such areas or such persons or such classes of persons as the Board may direct, and where such directions have assigned to two or more Appellate Assistant Commissioners the same area or the same persons or the same classes of persons they shall perform their functions in accordance with such orders as the Board may make for the distribution and allocation of the work to be performed.

Commentary

Appellate Assistant Commissioner of Expenditure Tax.—The Central Board of Revenue will empower a number of persons to act as Appellate Assistant Commissioners and then they shall perform their functions in respect of (i) such areas, or (ii) such persons, or (iii) such classes of persons, on the directions of the Board. Where the Board has assigned the same area or the same persons, or the same class of persons or two or more Appellate Assistant Commissioners they shall function in accordance with such distribution and allocation of the work, as alloted to them by the Board.

9. Commissioners of Expenditure-tax.—The Board may empower as manypersons as it thinks fit to exercise under this Act the functions of a Commissioner of Expenditure-tax, and on being so empowered the Commissioners of Expediture-tax shall perform their functions in respect of such areas or such persons or such classes of persons as the Board may direct and where such directions have assigned to two or more Commissioners of Expenditure-Tax the same area or the same persons or the same classes of persons they shall have concurrent jurisdiction subject to such orders, if any, as the Board may make for the distribution and allocation of the work to be performed.

Commentary

Commissioner of Expenditure Tax.—The Central Board of Revenue will empower a number of persons to work as Commissioners of Expenditure Tax, and being so empowered they shall attend to their duties in respect of : (i) such area, (ii) such persons, or (iii) such-classes of persons, as the Board may direct. In case of two or more Commissioners being assigned the same area or the same persons, or the same class of persons, they shall be working together enjoying similar jurisdictions, but surely subject to the orders which the Board will send them for allocation and distribution of work, they will have to do at their post.

10. Inspecting Assistant Commissioners of Expdnditure-tax.—The Commissioner of Expenditure-tax may empower as many persons as he thinks fit to exercise under this Act the functions of an Inspecting Assistant Commissioner of Expenditure-tax and on being so empowered the Inspecting Assistant Commissioners of Expenditure-tax shall perform their functions in respect of such areas or such persons or such classes of persons as the Commissioner of Expenditure-Tax may direct, and where such directions have assigned to two or more Inspecting Assistant Commissioners of Expenditure-Tax the same area or the same persons or the same classes of persons they shall perform their functions in accordance with such orders as the Commissioner of Expenditure may make for the distribution and allocation of the work to be performed.

Commentary

This section shows the difference between the Appellate Assistant Commissioner and the Inspecting Assistant Commissioner. The former will be appointed by the Central Board of Revenue and shall directly work under its control while the later will be appointed by the Commissioner and will be directly under his control.

11. Expenditure-tax Officer to be subordinate to the Commissioner of Expenditure-tax and the Inspecting Assistant Commissioner of Expenditure-tax.—The Expenditure-tax Officers shall be subordinate to the Commissioner of Expenditure-tax and the Inspecting Assistant Commissioner of Expenditure-tax within whose jurisdiction they perform their functions.

Commentary

The Expenditure Tax Officers will be subordinate to such Commissioner of Expenditure Tax and Inspecting Assistant Commissioner under whose jurisdiction they work directly. They will also be lower in rank and powers, as compared to Inspecting Assistant Commissioner and Commissioner of Expenditure Tax.

12. Expenditure-tax authorities to follow orders etc., of the Board.—All officers and other persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board:

Provided that no orders, instructions or directions shall be given by the Board so as to interfere with the discretion of the Appellate Assistant Commissioner of Expenditure-tax in the exercise of his appellate function.

Commentary

The Central Board of Revenue is the highest authority under this Act and all officers and other persons working under it will take and follow instructions given by the Board but the Appellate Assistant Commissioner though appointed by the Board will be free in exercising its judicial powers in deciding cases under this Act. For things other than this he will be under the Board. As said above the Board will pass orders from time to time for the distribution and the allocation of the work.

Thus there will be the following Expenditure Tax authorities :—

(1) The Commissioner of Expenditure Tax.

(2) The Appellate Commissioner of Expenditure Tax.

(3) The Inspecting Assistant Commissioner of Expenditure Tax.

(4) The Expenditure Tax Officer.

There is nothing like Director of Inspection and Inspector of Expenditure Tax under this Act.

Appellate Tribunal is not an authority under this Act.

Central Board of Revenue is the highest authority under this Act though not mentioned under the head of authorities, because it is common to Income Tax and Expenditure Tax and is constitued under the Central Board of Revenue Act 1924. It will perform such functions as laid down in the Act. In this Act too, under Section 41 the Board is authorised to make rules for carrying out the purposes of this Act.

CHAPTER IV

ASSESSMENT

13. Return of Expenditure.—(*1*) Every person whose Expenditure for the previous year was of such an amount as to render him liable to Expenditure-tax under this Act shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Expenditure-tax Officer a return in the prescribed form and verified in the prescribed manner setting forth his Expenditure for the previous year.

(*2*) If the Expenditure-tax Officer is of the opinion that the Expenditure of any person for any year is of such an amount as to render him liable to Expenditure-tax then, notwithstanding anything contained in sub-section (*1*), he may serve a notice upon such person requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be required in the notice relating to the Expenditure of such person for previous year mentioned in the notice.

(*3*) The Expenditure-tax Officer may, if he is satisfied that it is necessary to do so, extend the date for the delivery of the return under this section.

Commentary

SYNOPSIS

Scope—This is a little different from the Income Tax Law. In Income tax law a general notice is necessary to be published but here under this Act no notice of that type will be required, because Sub-section (I) of this section uses the words "Shall"..... "Furnish"..... "A return", under this section it is a binding upon a person to furnish a return if his Expenditure for the previous year was of such an amount as to render him liable to Expenditure tax under this Act, thus if no return is furnished by a person and he has also not been issued a notice rule Section (2) of this Act the Expenditure Tax Officer is free to issue notice under

Section 16 of this Act, treating the Expenditure as an escaped Expenditure[1]. But in case where no notice has been served under Section 13 (2) and the assessee makes a voluntary return after the expiry of the year of assessment, he may be assessed under section 15 with out taking help of Section 16[2].

The return is to be furnished by every person before the 30th day of June of the corresponding assessment year, where his expenditure in the previous year was of such an amount as to render him liable to tax. But under this Act there is no minimum fixed for the expenditure, which is not taxable. Proviso to Section 3 of the Act definitely lays down a limit of income in this connection and makes a reference of payability of expenditure tax—Proviso—of Section 3(1)—No expenditure tax shall be payable by an assessee for any assessment year if his income from all sources during the relevent previous year as reduced by the amount of taxes to which such income may be liable under any other law for the time being in force, does not exceed rupees thirty-six thousand.

It means that in case of individual or Hindu Undivided Family which alone are the taxable units under this Act, where such income exceeds rupees thirty-six thousand, his or its expenditure will be liable to tax at the rate or rates mentioned in the schedule. All such persons have to file returns in time as said above As the provisions of this Act apply from 1st of April 1958, the first year of assessment will be 1958-59 for which the return is to be filed and oridinarily the previous year for this will be 1957-58 where the accounts are kept up from 1st of April to 31st of March.

If any person is unable to file return within the time prescribed in this section he may put up an application before the Expenditure Tax Officer for taking some time to do so and the officer if he is satisfied will extend[3], such date for filing of the return.

Sub-Section (2)—If the Expenditure Tax Officer feels that the Expenditure of any for any year is of a taxable amount he will serve a notice on him to file a return within a certain time but this time given to him for filing of returns will not be less than 30 days in any case. On receipt of this notice that person has to file a return giving details of his Expenditure of in previous year mentioned in the notice, together with other particulars required. The return should be in the prescribed form and should be verified in the prescribed manner.

1. Commr. Ag. I. T. *vs.* Sultan Ali (1951) 20 I. T. R. 432 ; Govindrajulur Iyear *vs.* C. I. T. 1948 I. T. R. 391.

2. Harak Chand Makanji and Co. *vs.* C. I. T. 1948 I. T. R. 119. Ranchodass Karsnadas *vs.* C. I. T. (1954) 26 I. T. R. 105. The case quoted are from Income Tax Law while sections quoted are from the Expenditure Tax Act, for this please see in chart of ansologous law, in see begining of this chart.

3. Expenditure-tax Officer has such powers under sub-section (3) of Section 13 of this Act.

Sub-section (1) and (2).—If any person without reasonable cause has failed to file his returns, has filed returns but not in the manner described, and has not filed them within the time given, he is liable to a penalty under Section 17 (1) (a) and this penalty will not exeeed one and a half times the tax payable. Failure to file return in due time is also an offence under section 32 (1) (a) and is punishable with a fine. If under verification a wrong statement is given knowingly the assessee shall be punishable with simple imprisonment which may extend to one year, or a fine, or both. When no returns, are filed under Sub-section (2) of this Section, the Expenditure Tax Officer under Section 15(5) can make a best judgment assessment. But it is not within law to assess a person who has not filed a return under Sub-Section (1) and to whom no notice under Sub-Section (2) has been issued. Penalty under Section 17 can not be imposed unless a notice is served upon the assessee.

A notice issued by an officer of Expenditure tax who has no jurisdiction is invalid and in response to it if the assessee applies for the extention of time he can object on the point of Jurisdiction alright[1].

If a notice under Sub-Section (2) gives less than 30 days time to an assessee for filing returns it will be invalid ; a clear 30 days time from the date of service of notice is necessary[2]. A notice for furnishing return "within 30 days" is also invalid[3].

Notice under Sub-section (2) can be served by post as laid down in Section 37 of this Act[4]. It can also be served in the way prescribed under the Code of Civil Procedure 1908[5]. In the case of a firm or Hindu Undivided Family the notice is to be served on the Manager or to any adult male member of the family[6]. Notice to a recognised agent is also valid[7].

Sub-section (3).—In all the cases falling either under Section 13(1) or 13(2) the Expenditure Tax Officer can extend the date of filing the return if he is satisfied.

14. Return after due date and amendment of return.—If any person has not furnished a return within the time allowed under section 13, or having furnished a return under that section discovers any ommission or a wrong statement therein, he may furnish a return or a

1. Ram Krishna Ram Nath vs. C. I. T. 4 I. T. C. 171.
2. Jamnadas Poddar and Co. vs. C. I. T. (1935) I. T. R. 112.
3. C. I. T. vs. Ekbal and Co. 1945 I. T. R. 154.
4. De Suza vs. C. I. T. 6 I. T. C. 130, Emperor vs. Ramchandra 1, I. T. C. 21.
5. Himat Ram Pali Ram vs. C. I. T. 5, I. T. C. 133, S. P. N. C. T. Chattyar Firm vs. C. I. T. 5 I. T. C. 191.
6. C. I. T. vs. Thillai Nadar 2 I. T. C. 27.
7. Witney vs. I. R. 10 T. C. 88 (H. L.) ; I. R. vs. Hunt 8 T. C. 466

revised return, as the case may be, at any time before the assessment is made.

Commentary

In this section two types of cases have been dealt with : (*i*) where no return has been filed under section 13 and within the time given in section 13 (1) and 13 (2), (*ii*) where such returns have been filed which are wrong or there has been some ommission somewhere in them. In both such cases the assessee can either file a fresh return or a revised return before the assessment is made. In case where no notice has been served under sub-Section (2) of section 13 the assessee can file a return even after the expiry of the assessment year[1]. Even when the assessee is late or out of time he should file returns to avoid penalty under section 17 of this Act. If the assessee finds some ommission or something wrong in the returns he should file a revised return in both the cases to be covered under this section; only writing to the Expenditure Tax Officer for making necessary corrections will not do[2].

16. Assessment.—(1) If the Expenditure-tax Officer is satisfied without requiring the presence of the assessee or production by him of any evidence that a return made under section 13 or section 14 is correct compelete, he shall assess the taxable Expenditure of the assessee and determine the amount payable by him as Expenditure-tax.

(2) If the Expenditure-tax Officer is not so satisfied, he shall serve a notice on the assessee, requiring him either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the assessee may rely in support of his return.

(3) The Expenditure-tax Officer, after hearing such evidence as the person may produce and such other evidence as he may require on any specified points, shall, by order in writing, assess the taxable expenditure of the assessee and determine the amount payable by him as Expenditure-tax.

(4) For the purpose of making an assessment under this Act, the Expenditure-tax Officer may serve, on any person who has made a return under sub-section (1) of section 13 or upon whom a notice has been served under sub-section (2) of that section, a notice requiring him to produce or cause to be produced on a date specified in the notice

1. Harak Chand Makanji and Co. vs. C. I. T. (1948) I. T. R. 119.

2. Gopaldas Parshotamdas vs. C. I. T. (1941) I. T. R. 130 ; Waman Padmanabha Dave vs. C. I. T. (1952) 22 I. T. R. 339.

such accounts, records or other documents as the Expenditure-tax Officer may require.

(5) If any person fails to make a return in response to any notice under sub-section (2) of section 13, or fails to comply with the terms of any notice issued under sub-section (2) or sub-section (4), the Expenditure-tax Officer shall make the assessment to the best of his judgment and determine the amount payable by the person as expenditure-tax on the basis of such assessment.

Commentary

SYNOPSIS

1. *Sub-section (1).*
2. *Complete.*
3. *Sub-section (2).*
4. *Sub-section (3).*
5. *Sub-section (4).*
6. *Sub-section (5)—Best judgment assessment.*
7. *Best judgment assessment—When justified.*
8. *To the best of his judgment.*

Sub section (1).—Section 15(1) lays down two procedures. (1) If the Expenditure Tax Officer is satisfied with the return submitted by the assessee he may not require his presence and make assessment on the basis of the return submitted.

(2) If the Expenditure Tax Officer is not satisfied that the return submitted is complete he will give a notice to the assessee to produce such evidence in support of his return as will satisfy the officer and after weighing it he shall assess the taxable expenditure and find out the tax payable by him.

'Complete'.—The word used is only "Complete' and not "Correct and Complete" as used in section 23 (1) of the Income Tax Act. It seems that under this section only the completeness of the return is to be checked and if it is complete the assessment will be made without asking the assessee to produce any evidence[1].

Sub-section (2).—If the Expenditure Tax Officer is not satisfied by the completeness of the return, it is mandatory on him to issue a notice to the assessee before passing an order. The words used are "shall serve a notice". The assessee will be served with a notice to attend the office of the Expenditure Tax Officer in person or to produce or cause to be produced any evidence in support of his enteries in the return on that date (mentioned in the notice). If he feels that the return is incomplete he will have to issue notice before assessing the person concerned[2]. It is also necessary that the person concerned is given an opportunity before the assessment is made[3]. If the officer calls him and does not give an opportunity to produce evidence in support of his return, and then makes an assessment, such an order will be invalid[4]. Justice Mukerji has supported this while Justice Greaves has given a dissenting judgement.

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1. Asoka Mills Ltd. vs. C. I. T. 6 I. T. C. 339.
2. Kesridas and Sons vs. C. I. T. 2. I. T. C. 213; Ramprata Sukhdayal vs. C. I. T. 3 I. T. C. 362.
3. Harmukhrai Dulichand vs. C. I. T. 3 I. T. C 198, 206.
4. Nirmal Kumar Singh vs. Secretary of States 2 (I. . TC.) 20,025.

Sub-section (3)—After the notice under Sub-section (2) has been complied with the officer must hear the assessee and admit such evidence that he wants to produce.The Expenditure Tax Officer may also require some fresh evidences and proofs to be given by the assessee on some specified points[1]. In cases where the assessee can not satisfy the department before making the assessment, the Expenditure Tax Officer should take some other sources to get the proper material for assessment[2].

The proceedings before an Expenditure Tax Officer are the proceedings not before a court[3]. They have certain powers of a court as given in section 33 of the Act. They are thus quasi-judicial-Courts. He should therefore try to work with a judicial mind[4]. The quasi judicial enquiry should be confidential and if some superior is present and puts questions to the assessee then such a proceeding shall not be proper[5]. "The assessee has the full right to inspect the records and all documents and materials that are to be used against him[6]".

The Expenditure Tax Officer is not free to assess with out any material[7], mere suspisions, conjectures and surmises will not do[8], but even if there is no direct evidence to prove that the books of the assessee are not correct, the Expenditure Tax Officer can reject them if he feels genuinely that they are false and unreliable[9].

Sub-section (4).—Under this Sub-section the Expenditure Tax Officer has power to issue a notice for the production of accounts, records and documents in two cases.

(1) Where an assessee has made a return under section 13 (1).

(2) Where in accordance with section 13 (2) a notice has been served on him.

In cases where a notice has been served under section 13 (2) the Expenditure Tax Officer can ask the assessee to produce accounts and documents even before a return has been filed by him[10]. He has full powers to do so even after the return is filed[11]. But in such cases the assessee must be given sufficient time to produce such books[12].

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1. Hohaimat Hayat vs. C. I. T. 5 I. T. C. 159, 167 (F. B.)
2. Gwada Subhayya vs. C. I. T 1939 I. T. R. 21 (F. B.)
3. Ganga Ram Balmakund vs. C.I T. 1937 I. T. R. 464; Gudru Goverdhaniah (1954) 25 I. T R. 40
4. Gopinath Naik vs. C. I. T. (1936) I. T. R. 1, 16 ; Dunichand Dhani Ram vs. C. I. T. 2 I. T. C. 188.
5. Dinshaw Darashaw Shroff vs. C. I. T. (1943) I. T. R. 172.
6. Surajmal Motha and Co. vs. Vishnath Shastri (1954) 26 I. T. R. 1. 13.
7. Dhakiswari Cotton Mills Ltd. vs. C. I. T. (1954) 26 I. T. R. 775, 782 (S. C.)
8. Narain Chand Baidya vs. C. I. T. (1951) 20 I. T. R. 287, 292.
9. Gangaram Balumkund vs. C, I. T. (1931) I. T. R. 464, 484.
10. Ram Kishan Das Bagri vs. C. I. T. 2 I T. C. 324, 327.
11. Ram Khelwan Ugamlal vs. C. I. T. 3 I. T. C. 225 (F. B.) ; Kuwarji Anand vs. C. I. T. 5 I. T. C. 917, 430.
12. C. I. T. vs. Bombay Trust Crop Ltd., 1936 I. T. R, 323, 338 (P. C.) ; *In re*, Govindram Sakseria 1943 I.T. R. 104, 123.

Best Judgment Assessment—Sub-section (5).—There are three cases in which Best Judgment assessments can be made under this Section. There is no free choice for the Expenditure Tax Officer as he has to make an assessment alright because the provisions are mandatory[1], on this point.

Best Judgment Assessment—When justified.—If an assessee does not fulfil any of the conditions given below, a best Judgment assessment in such case will be justified .: (1) Where an assessee has failed to furnish return in response to a notice under Section 13 (2).

(2) Where an assessee fails to comply with the terms of the notice issued under Section, 16 (2) *i. e.*, where the return has been filed by the assessee but the Expenditure Tax Officer having found them incomplete serves a notice on him either to appear or to produce evidence in support of the same, but he fails to comply with the same (has not been able either to attend or produce the books).

(3) Where the assessee fails to furnish return in response to a notice issued under Sub-section (4) of this Section where he was asked to produce accounts and other documents or records.

To the best of his Judgment.—In determining the taxable Expenditure under this Section the Expenditure tax Officer has not to work in an arbitrary manner. His judgment must be based on the principles of equity, and basic rules of law. In the words of the Lords of the Privy Council "The assessing authority must not Act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figures of assessment .. and though there must necessarily be guess work in the matter, it must be honest guess work"[3].

The assessing Authority has to make up his mind judicially with fairness to assessee after taking into account all the facts[4]. The spirit should be judicial and so the conclusions[5]. Rules of natural justice must be followed[6]. He should work without bias and should give reasonable opportunity to the assessee to explain his case[7].

1. Gangaram Balmokund vs. C. I. T. (1957) I. T. R. 464, 475 ; Mahasukhram Mandal vs. C. I. T. (1955) 27 I. T. R. 596.

2. Harmukhrai Dulichand vs. C. I. T. 3 I. T. C. 198 ; Ramaswami Chettiar vs. C. I. T. 3 I. T. C. 290.

3. C. I. T. vs. Badridas Hamret Shoy A. I. R. 1937 P. C. 133, I. L. R. 1937 Nag. 191.

4. In re Bhagat Halwai (1928) 3 I. T. C. 48 (Alld.).

5. In re Harmukhrai Dulichand A. I. R. 1928 Cal. 587, 56 Cal. 39.

6. Gopinath Naik vs. C. I. T. A. I. R. 1936 All. 286, 59 All. 200.

7. Gabgaram Balmukund vs. C. I. T. A. I. R. 1937 Lah. 721.

In the case of *C. I. T.* vs. *Sarangpur Cotton Manufacturing Co.*, Their Lordship of the Privy Council said..."It may well be that, though the profit brought out in the accounts is not the true figures for income tax purposes, the true figure can be aocurately deduced there from. The simplest case would be where it appears on the force of the accounts that a stated deduction has been made for the purpose of a reserve. But there may well be more complicated cases, in which never-the-less it is possible to deduce the true profit from the accounts and the judgment of the Income Tax Officer..... must be properly exercised. It is misleading to describe this duty of the Income-Tax Officer as a discretionary power." This is a case under Section 13 of the Income Tax Act where the I. T. O. has been given power to determine profits in his own way. But the Privy Council has said above that even such powers cannot be used arbitrarily. Even if the Expenditure Tax Officer finds that certain enteries in the account books are false or incomplete he is not free to make judgment on his own estimates unless he has evidence to support it[1].

There is another very important case of the Allahabad High Court on this point where it has been held that "the exercise of the best judgment depends on the application of judicial discretion of the Income Tax Officer and there should be no interference with his order unless it is shown to the satisfaction of the Appellate Court that the discretion has been exercised *mala jide* or arbitrarily or capriciously, and the burden of satisfying the Appellate Court in this respect must rest on the party challanging the exercise of the best judgment by the Income Tax officer"[2].

Under Section 16 (5) the best judgment assessment will not be correct and valid unless a notice has not been given to the assessee[3]. Surely under this Sub-section the Expenditure Tax Officer has been given a power of summary assessments and this is with a view to panalies deliberate or habitual defaulters[4]. The Expenditure Tax Officer should not sit with a desire to punish such a defaulter though however great his fault may be[5]. Most of the cases quoted are taken from Income Tax Law because this Act has been drafted on the lines of that Act, so it will help the readers to understand the problems of Expenditure Tax by referring to the decided cases of the Income Tax.

16. Expeuditure escaping assessment.—If the Expenditure tax Officer :—

(*a*) has reason to believe that by reason of the omission or failure on the part of the assessee to make a return of his Expenditure under section 13 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, the Expenditure

1. C. I. T. vs. Chittyar Firm, A. I. R. 1932 Rang. 52; 137 I. C. 206.
2. Singh Engineering Works Ltd. vs. C. I. T. 1953 A. L. W. 208.
3. G. I. T. vs. Sultan Ali (1951, 20 I. T. R.432.
4. Gunda Subbayya vs. C. I. T. (1939) I. T. R. 21, 27 (F. B.)
5. Johram Sher Singh vs. C, I. T. 1934 I. T. R. 129.

chargeable to tax has escaped assessment for that year, whether by reason of under-assessment for that year the expenditure chargeable to tax has

(*b*) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in clause (*a*), that the expenpenditure chargeable to tax has escaped assessment for any assessment year, whether by reason of under-assessment or assessment at too low a rate or otherwise ;

he may, in cases falling under clause (*a*) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 13, and may proceed to assess or reassess such expenditure and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section.

Commentary

Scope.—Under this section the Expenditure Tax Officer has been given powers to assess the escaped expenditure which either escaped totally from being assessed or was under-assessed. Action can be taken under the following circumstances :—

(1) When the assessee concealed his expenditure (2) though no concalement the Expenditure Tax Officer in consequence of any information in his possession has reason to believe that wealth has escaped assessment.

Clause (a).—This Clause operates when the Expenditure Tax Officer feels that in any assessment year, (1) the chargeable to tax has escaped assessment, or (2) is assessed at too low a rate or otherwise, because of the failure:—(1) to make a return under section 14 of the Act, or (2) to disclose fully and truely all material facts necessary for his assessment for the year. In this sub-section it is due to the ommission or failure on the part of the assessee while in sub-clause (*b*) following it is in consequence of information, that the proceedings under this section are started.

Clause (b).—This Clause will operate only when the Expenditure Tax Officer, in consequence of information in his possession, has reason to believe that the expenditure chargeable to tax has escaped assessment due to (1) the reason of being under assessed, or (2) the reason of being assessed at too low a rate or otherwise.

In cases falling under Clause (*a*) notice to the assessee be given within eight years from the end of the relevant assessment year and in cases falling under Clause (*b*) within four years from the end of the relevant assessment year. After the due notice has been given,

the Expenditue Tax Officer may proceed to assess or re-assess the escaped expenditure chargeable to tax.

In Clause (*a*) where an assessee makes a false return or does not disclose material facts fully and truely, he keeps the Expenditure Tax Officer in dark of his real position, under such circumstances he may not only be assessed for his escaped expenditnre but the penalty proceedings against him under section 17 (1) (*c*) can be taken alright.

Under Clause (*b*) the Expenditure Tax Officer can take an action only on some material information in his possession showing that some expenditure has escaped assessment but only if he differs from his predecessor on the point of chargeabality or wants to change his opinion, he cannot reopen the case[1].

'Information'.—It does not mean only information about material facts but also about the position of law or court decisions[2]; upon such information also the case may be re-opened.

Returns.—In case where no notice under section 13 (2) has been issued in the year of assessment and no return has also been filed in that year, the assessment proceedings can only be taken for escaped Expenditurc if a notice is issued[3]. There is one exception to this case and that is where the assessee who has not been served with an individual notice under section 13(2) files voluntary return after the assessment year, but if the assessee submits, return against a notice under section 13 (2) issued after the expirey of the assessment year, and the Expenditure Tax Officer makes an assessment also, such order will be invalid[4], and the notice issued is wrong. In cases where assessment has not been completed and the officer finds that some wealth has not been included he cannot insiston treating this Expenditnre as the escaped expenditure and no proceedings under this section can be taken for it[5].

Hindu Undivided Family.—If in a case of Hindu Undivided Family the partition has taken place and has been duely accepted by the Expenditure Tax Officer but after some time it is found by him that some expenditure for assessment year prior to the disruption of the family, has escaped assessment then according to the principle laid down by the Supreme Court[6], an assessment under this sectionread with section 15 can be made on the family alright for that period. The decision of the Supreme Court is in a case under section 34 of the Indian Income Tax Act read with section 23 and these sections are similar to sections 16 and 15 of the Expenditure Act. A notice to *Karta* of the family shall be issued before proceeding to make an assessment in this case.

Notice.—It is Expenditure Tax Officer who can assess under this section and no other and he should proceed to do so by issuing a notice[7].

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1. I. T. Appellate Tribunal vs. Byramji and Co. (1946) I. T. R. 174; Raghavalu Naidu and Sons vs. C. I. T. (1945) I. T. R. 194.
2. Mahabir Pd. Mannalal vs. C. I. T. (1947) I. T. R. 393, 405; In re-Dadar Sheo Stores (1946) I. T. R. 431; Raghavalu Naidu and Sons vs. C. I. T. (1945) I. T. R. 194; C. I T. vs. Laks iman Iyer (1945) I T. R 242; Chatturam Horilal vs. C. I. T (1955) 27 I T R 709 (S. C.).
3. C. Ag. I. Tax vs. Sultan Ali (1951) 20 I. T. R. 432 11. 448.
4. C. Ag. I. Tax vs. Sultan Ali (1951) 20 I. T. R. 432.
5. Sir Kajendranath Mukerji vs. C. I. T. (1934) I. T. R. 71 (P. C.); Lachhmi Ram Basant Lal vs. C. I. T. 5 I. T. C. 114.
6. Lakshminarain Bhadani vs. C. I. T. (1951) 20 I. T. R. 595.
7. Sheikh Abdul Kadir Maracayar and Co. vs. C. I. T. 2 I. T. C. 372.

The notice will contain all or any of the requirements which may be included in a notice under sub-section (2) of section 13 of this Act.

If, a notice under this section has been issued it is not necessary to issue a notice under Section 13 (2)[1]. Clear thirty days time should be given to the assessee[2]. Before an assessment is made under this section a notice must be served on the assessee to make the assessment valid. This notice will contain all or any of the requirements which may be included in a notice under sub-section (2) of section 14 of this Act.

Under this section the whole assessment cannot be opened the jurisdiction of the Expenditure Tax Officer is limited to that portion of the assessment only which may be made for the escaped assessment[3]; rest of the assessments cannot be disturbed[4]. While making assessments under this section time limit must be kept in mind by the Expenditure Tax Officer, if they are not kept up, the assessment made will be invalid[5]. If after an appeal an assessment has become final and then it is found that some expenditure has escaped assessment the Expenditure Tax Officer can take action under this section and the above appeal is no bar to it[6]. If a particular amount of wealth was not taken into account in any assessment year it can not be charged to tax by including it in another assessment year, because it will be absolutely illegal the only remedy is to open the case for that particular year, under this section and assess the escaped expenditure[7].

17. Penalty for concealment.—(*1*) If the Expenditure tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person --

(*a*) has without reasonable cause failed to furnish the return of his expenditure which he is required to furnish under sub-section (1) or sub-section (2) of section 13 or section 16 or has without reasonable cause failed to furnish it within the time allowed and in the manner required ; or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (*2*) or sub-section (*4*) of section 15 ; or

(*c*) has concealed the particulars of any expendiure or deliberately furnished inacurrate particulars threof,

1. Vir Bahadur Bansi Lal vs. C. I. T. (1936) I. T. R. 111.
2. Ram Sukh Moti Lal vs. C. I. T. (1955) 27 I. T. R. 54.
3. Kashinath Bagla vs. C. I. T. 4 I. T. C. 472.
4. Per Rankin C. J. in Satendra Mohs Roy vs. C. I. T. 4 I. T. C. 447.
5. In re Burn and Co. (1934) I. T. R. 30.
6. In re Haldar and Sons 1942 I. T. R. 79.
7. Mohammad Ibahim vs. C. I. T. (1942) I. T. R. 64 ; see also Jagganath Ram Dayal vs. C. I. T. (1950) 1. T. R. 375.

he or it may, by order in writing direct that such person shall pay by way of penalty—

(*i*) in the case referred to in clause (*a*), in addition to the amount of Expenditure-tax payable by him, a sum not exceeding one-and-a-half times the amount of such tax, and

(*ii*) in the case referred to in clause (*b*) or clause (*c*) in addition to the amount of Expenditure-tax payable by him, a sum not exceeding one-and-a-half times the amount of the tax, if any, which would have been avoided if the Expenditure returned by such person had been accepted as correct.

(*2*) No order shall be made under sub-section (*1*) unless the person concerned has been given a reasonable opportunity of being heard

(*3*) No prosecution for an offence under this Act shall be instituted in respect of the same facts in relation to which a penalty has been imposed under this section.

(*4*) The Expenditure-tax Officer shall not impose any penalty under this section without previous approval of the Inspecting Assistant Commissioner of Expenditure-tax.

Commentary

Scope.—This Section empowers a number of officers to impose penalties on fradulent and those assessees who do not abide by the law. The officers who have been authorised to impose such penalties are :—

(*i*) Expenditure Tax Officer, (*ii*) Appellate Assistant Commissioner,

(*iii*) Commissioner, and (*iv*) Appellate Tribunal.

The Expenditure-tax Officer cannot impose any penalty under this section unless he has taken a sanction, for his doing so, from the Intpecting Assistant Commissioner. As will be seen, Inspecting Assistant Commissioner has no power to impose any penalty under this section but since he is an experienced and a superi or executive authority, in the interests of justice to the assessee[1], such a check on the assessing authority has been imposed by Sub-Section (4) of this section.

These penalties can be imopsed during any proceedings under this Act. An assessee might have filed an appeal against the order o the Expenditure-tax Officer or the Appellate Assistant Commissioner and while hearing these appeals the Appellate Assistant Commissioner or the Tribunal as the case may be, may impose penalty on such assessee if he is found to have committed any offence under this section[2].

The acts of the assessee for which the penalties could be imposed have been grouped into three parts.

Sub-section 17 (**1**)(*a*).—If without any reasonable cause the assessee has—

(1) failed to furnish the returns of his Expenditure as laid down under sections 13 (1) and 13 (2) ;

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1. Lachman Das Meherchand *vs.* I. T. App. Tribunal 1944 I. T. R. 432.
2. Malik Damsaz Khan vs. C. I. T. (1947) I. T. R. 445 (P. C.) ; Banarsi Dad vs. C. I. T. (1936) I. T. R. 217.

(2) failed to furnish the return of his Expenditure as laid down under section 16.

(3) failed to furnish returns under sections 13 (1) and 13 (2) and within the time allowed ;

(4) failed to furnish returns under sections 14 (1) and 14 (2) and 16, in the manner required therein.

or

Sub-section 17(1) (*b*).—If without any reasonable cause the assessee has—

(1) failed to comply with a notice under sub-section (2) of section 15 ;

(2) failed to comply with a notice under sub-section (4) of Section 15.

or

Sub-section 17 (1)(*c*).—has—

(1) concealed the particulars of his expenditure.

(3) knowingly furnished inacurate particulars of his expenditure.

If an assessee commits any offence under this section a penalty will be imposed on him and such penalties are—

(*i*) In case of offences committed under sub-clause (*a*), the assessee has to pay a sum of money which as decided by the authority will not exceed, one and a half times the amount of the tax plus the tax that he has already to pay.

(*ii*) In case of offences committed under Sub-section 18(1)(*b*) and (*c*), one and half times the tax which the assessee would have avoided in his return of expenditure had been accepted plus the tax already payable by him.

In all the above cases no penalties can be imposed unless an opportunity has been given to the assessee of being heard. If a penalty has been imposed, the assessee cannot be prosecuted for the same offence again.

When the assessee has submitted returns after the time given in the notice, penalty can be imposed on him alright. If an assessee has not submitted returns under Section 13(I) penalty can be imposed on him during the proceedings taken under Section 16 and he cannot take a plea that he was not issued a notice under section 13(2)[1]. Expenditure concealed in the original return is an offence and even if an assessee scubmits a revised return before the penalty is imposed he cannot avoid penalty .

Under Section 16.—While proceeding to assess under this section for the escaped assessment, a penalty can be imposed for any default that the assessee would have committed under this proceeding and also for a default made under the assessment proceedings of the past year for which the action is being taken under Section 16. The decision of the Madras High Court[3] is very clear on this point and must be read fully.

Joint Family.—In the case of a Hindu Undivided Family a penalty for the prepartition period cannot be imposed where the partition has been accepted by the Expenditure Tax Officer under Section 19(I)[4].

1. Govindrajulu Iyer vs. C. I. T. (1948) I. T. R. 391.
2. Arunachalma Chettiar vs. C. I. T. 6 I. T. C. 58 ; Ch. Waman Padmanabha Dave vs. C. I. T. (1952) 22 I, T. R. 339.
3. Govindrajulu Iyer vs. C. I. T. (1948) I. T. R. 391.
4. C. I. T. vs. Sanichar Sah Bhim Sah (1955) 27 I. T. R. 307.

On representatives.—No penalty proceedings can be started on the rep-resentative of the deceased for the offences of the assessee who is no more[1], but if any penalty has already been imposed before the death of the assessee it can be realised from the estate[2].

Time and Penalty.—There is no time limit for imposing a penalty under this Section. The penalty can be imposed after making the ass'ss-ment order provided a notice under sub Section (2) has been issued before starting the penalty proceedings[3].

The decision of the Calcutta High Court[4] is of very importance on the point of issue of notice for 'when' and 'why' and should be read', in this connection. This is again a case under Income Tax Law from which correct inferences can be drawn for this section of the Act.

Opportunity to Assessee.—The assessee should be given an opportunity of being heard and if such an opportunity is not given the order imposing penalty will be invalid[5]. The power of imposing penalty must be exercised judicially and should not be a guess only[6]. In every case the circumstances will be different, so each case has to be decided separately in an independent way, judicially[7], though there cannot be hard and fast rules for imposing penalties under this section.

There can be no prosecution under section 32 of this Act for the same offence for which a penalty has already been imposed[8]. The question of deciding the amount of penalty is a question of fact and cannot be decided by the Court[9]. If there has been an intentional conceal-ment, Expenditure tax authority is competent to take action because it is also a question of fact[10] and cannot be decided by the court.

CHAPTER V

LIABILITY TO ASSESSMENT IN SPECIAL CASES.

18. Tax of deceased person payable by legal repre-sentative—(1) Where a person dies, his executor, admi-nistrator or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the Expenditure-tax assessed as payable by such person, or any sum, which would have been payable by him under this Act if he had not died

(2) Where a person dies without having furnished a return under the provisions of section 13 or after having furnished a return which the Expenditure-tax Officer has

1. Ellis Reid vs. C. I. T. 5. I. T. C, 100. Att. Gen. vs. Canter 22 T. C. 422 (C. A.).
2. Cf. Att. Gen. vs. idland Bank M Executor and Trustee Co. Ltd. 19 T.C. 163
3. Virbhan Bansilal vs. C. I. T. 19381. T. R. 136, 616.
4. Guru Prasad Shaw vs. C. I. T. (1944) I. T. R. 233.
5. Banarsi Das vs. C. I. T. 1936 I. T. R. 217 ; Butto Kristo Kamla vs. C. I. T. 51. T. R. 12.
6. C. I. T. vs. Vedlapattla Veera Vanketramiah (1943) I. T. R. 308.
7. C. I. T. vs. Vedlapatta Veera Vanketramiah 1948 I. T. R. 308.
8. Cf. King Emperor vs. Hussain Alley and Co., I. I. T. R. 48.
9. Gopaldas Purshotamdas (1941) I. T. R. 372.
10. In re. Lachmandas Brijballabh Das (1942) I. T. R. 186.

reason to believe to be incorrect or incomplete, the Expenditure-tax Officer may make an assessment of the net Expenditure of such person and determine the Expenditure-tax payable by the person on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person if he had survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which might under the provisions of section 15 have been required from the deceased person.

(3) The provisions of section 13, section 14 and section 15 shall apply to an executor, administrator or other legal representative as they apply to any person referred to in those sections.

Commentary

The tax of the deceased person can not be realised from the executors, administrators or the legal representative of his state unless there is, a clear provision of law under that Act to that effect[1]. Where a person died during the assessment proceedings such proceedings could not be continued and the assessee could not be assessed unless there was a specific provision for doing so. It is for this reason that this section has been inserted in this Act here.

Sub-section (1).—(*i*) The liability of the legal representative to pay such tax is limited to the amount it can be realised from the estate of the deceased[2], *i. e.*, to the extent the estate can meet this charge.

(*ii*) The legal representative shall be liable to pay the following :—

(*a*) the tax assessed as payable.

(*b*) the tax that would have been payable by him under the Act had he not died.

The terms executor, administrator or legal representative include an heir too, per section 2 (11) of the Civil Procedure Code. Salary received by the legal representative after the death of the assessee is taxable in the hands of the representative[4].

Sub-section (2).—This Sub-section authorises the Expenditure Tax Officerto assess the executor, administrator, or legal representative of the deceased and determine the tax payable after issuing a notice to him, in the manner it would have been issued to the deceased. This assessment has to be made under the following cases :—

(*i*) Where a person dies without having furnished a return as provided in section 13 of the Act.

(*ii*) Where a person dies after furnishing a return.

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1. Ellis C. Reid vs. C. I. T. 5 I. T. C. 100 ; Mitchal vs. Mc Neill and Co. 2 I. T. C. 298.
2. In re Mhranirai Chandharani, 1942 I. T. R. 199.
3. Section 2 (1).
4. In re Usharani (1942) I. T. R. (Cal.) Allen vs. Trehearne 22 T. C. 15 (C. A.)

Provided the Expenditure Tax Officer has reason to believe that such returns are incorrect or incomplete.

Under such conditions the Expenditure Tax Officer will serve on the executors, administrator or legal representative a notice in the form and way, it would have been served on the assessee had he been alive. This notice will require from them the production of any accounts, documents or other evidence as required under the provisions of Seetion 15 of the Act. After this the assessing authority will make an assessment and determine th e tax.

Incorrect or Incomplete.—In this Sub-secction the words used are "Which the Expenditure Tax Officer has reason to believe to be "*Incorrect or Incomplete.*" While in section 23(1) of the Income Tax Act on the lines of which this section is made, uses the words" Incorrect and Incomplete". Here it wants that the Income Tax Officer should see that the return is both correct and complete.

The assessment under this Sub-section is to be made under the provisions of Section 15, but in Section 15 the word used are correct and complete". This gives an apportunity to the readers to make a comperative study of the use of the words "and" and "or" in the statute.

Assessment.—Before making an assessment on the executor, administrator, or legal representative of the deceased, a proper notice must be issued to him, and the legal representative will have to comply with the requirements of the same.

If the assessee after filing a return dies, and these returns are found to be correct, and complete the legal representative can be assessed under Section 15(1). In case the return is found to be incomplete or incorrect, a notice, should be issued to the assessee before his death, and then the assessment can be completed. If the representative complies with the contents of the notice, the assessment will be made under Section 15(3) and if he does not comply, then under Section 15(5). If a notice under Seetion 13(2) was issued to the deceased and he did not file a return in response to it, there is no necessity of serving a fresh notice to the legal representative and the Expenditure Tax Officer can complete the assessment made under Section 15(5) but it would be fair if a notice is issued to the legal representative.

Sub-section (3).—The provisions of Sections 13, 14 and 15 apply to the executor, administrator or legal representative as they apply to any person in this Act.

19. Assessment after partition of a Hindu undivided family.– (*1*) Where, at the time of making an assessment, it is brought to the notice to the Expenditure-tax Officer that a partition has taken place among the members of a Hindu undivided family, and the Expenditure-tax Officer, after inquiry, is satisfied that the joint family property has been partitioned as a whole among the various

members or groups of members in definite portions, he shall record an order to that effect and make assessments on the Expenditure of the undivided, family as such for the assessment year or years, including the year relevant to the previous year in which the partition has taken place, and each member or group of members shall be liable jointly and severally for the tax assessed on the Expenditure of the joint family as such.

(2) Where the Expenditure-tax Officer is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act, to continue to be a Hindu undivided family liable to be assessed as such.

Commentary

By bringing in this section an assessment of expenditure incurred in the prepartitition period, can be safely made in the case of H. U. F. and thus there will be no loss of revenue, as collection of tax can be made alright from members or group of members of such family[1].

Sub-section (1).—If at the time of making an assessment it is brought to the notice of the Expenditure Tax Officer that a partition has taken place among the members of a Hindu Undivided Family he will do the following things—

(1) He will make an inquiry to his entire satisfaction to know if the joint family property has been partitioned as a whole among the various members or group of members in definite proportions and if he is satisfied that it is really so—

(2) He will record an order recognising the partition..... after that...

(3) He shall make an assessment on the expenditure of Undivided Hindu family for the (*i*) assessment year or years and also, (*ii*) for the year relevant to previous year in which the partition has taken place (if the partition has taken place.

In the end, this Sub-Section makes each member or group of members, jointly and severally responsible or liable for the tax assessed on the net wealth of the joint family.

If a family has been assessed as Hindu Undivided Family it will be so assessed ever unless an order of partition has been passed by the Expenditure Tax Officer. If a partition has taken place it should be discussed before the Expenditure Tax Officer during assessment proceeding but if it has not been done so the plea of partition cannot be raised for the first time in an appeal againt such order of assessment[2]. In case the partition before the Expenditure

1. Sir Sunder Singh Majithia vs. C. I. T.,(1942) I. T. R. 457, 464 (P. C.) under Income Tax Law.

2. Biradhmal Lodha vs. C. I. T. (1934) I. T. R. 164.

Tax Officer is not recognised, in one year he can claim such position in the next year again[1]. If a certain individual has been assessed as a Hindu Undivided Family in one year, he can move an application before the Expenditure Tax Officer in the next assessment year to assess him as an individual, giving proof that the property belongs to him and not to the H. U. F.[2].

Inquiry.—The Expenditure Tax Officer on having received the information or notice of partition will make a thorough inquiry before using his discretion to decide whether a partition has taken place[3].

Disruption of Hindu Undivided Family and how.—It becomes difficult to find out if an actual disruption of a Hindu Undivided Family has taken place. For this certain principles have been laid down—

(1) **Proof of Partition.**—The Tax Expenditure Tax Officer under this section has to make an enquiry and the assessee may produce the deed of partition. It is not necessary that the officer will believe the contents of the deed, if no sufficient material proof is available[4]. It is the duty of the assessee to prove partition[5].

(2) **Hindu Undivided Family Property fully Partitioned.**—In case some of the assets have been divided and the rest are to be divided at some latter date, this is a partial partition and this is not sufficient for the Expenditure Tax Officer to admit such partition[6].

(3) **Physical division necessary.**—It is absolutely necessary to see that there has been a physical division of the property of the Hindu Undivided Family[7]. Mere division of interests will not do. In families governed by Dayabhaga law there is a division of interest even before actual partition. To admit partition the property must be physically divided into defenit portions.

(4) **Hindu Undivided Family Disrupted.**—If at the time of assessment also the Hindu Undivided Family exists as such and only some of the members have gone out of the Compass of this family, there is no complete disruption of the family and it cannot be said that a partition has taken place.

Sub-section (2)—If the Expenditure Tax Officer after putting the required test and making thorough inquiries is not satisfied he will declare this family as a Hindu Undivided Family and such family then under the Act will be liable to tax as such and shall be so assessed.

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1. Karamchand vs. C. I. T. 5 I. T. C. 313.
2. Baijnath vs. C. I. T. (1954) 26 I. T. R. 324.
3. Bansidhar and Sons vs. C. I. T. 1938 I. T. R. 95; it is a similar case under Income Tax Law.
4. *In re*, Gulab Singh Johaimal (1946) I. T. R. 239; Sher Singh Nathuram vs. C. I. T. (1934) I. T. R. 479, 482.
5. Nihorilal Prabhudayal vs. C. I. T. (1951) 19 I. T. R. 249, 244; Ram Pd. Makhanlal vs. C. I. T. (1952) 21, I. T. R. 555.
6. Maya Appa Chettiar vs. C. I. T (1950) I. T. R. 516; Biradmal Lodha vs. C. I. T. (1934) I. T. R. 164.
7. Goverdhandas Mangaldas vs. C I. T. (1943) I. T, R. 183, 194, 200.

20. Settlement of tax payable in certain cases.—(*1*) Where an assessee who is in receipt of sums guaranteed or assured by the Central Government as his privy purse applies to the Central Government in the prescribed manner and within the prescribed time for the settlement of the expenditure-tax payable by him under this Act for any assessment year, then, notwithstanding anything contained in Chaper IV, the Central Government may having regard to the obligations which according to the practice, usage or tradition of the family to which the assessee belongs have to be or are being discharged by him, assess the expenditure-tax payable by him for the assessment year, to be such sum as to the Central Government appears proper.

(*2*) Any order assessing any sum as being payable for any assessment year under sub-section (*1*) may, if the Central Government so directs, have effect for any subsequent assessment year or year,

Commentary

Sub-section (1).—Special facility for assessment, under this Section has been granted to those assessees who are in receipt of sums-guaranteed or assured by the Central Government as their privy purse-If such an assessee applies to the Central Government for the settlement of the expenditure tax payable by him under this Act for any assessment year, then the proceedings mentioned in Chapter IV will not apply to him but the Central Government will assess a sum which it deems proper, payable towards this tax. This amount shall be fixed by the Central Government keeping in view the obligations which such an assessee has to discharge or are being discharged by him. But this facility is available to an assessee only if he applies in the prescribed manner and within the prescribed time.

Sub-section (2).—If the Central Government likes, it may direct the assesee to pay the same amount of tax so assessed, for other subsequent assesssment year or years.

This has been done to avoid the appearance of Rajas of and on before the taxing authorities, and also to minimise corruption.

CHAPTER VI.

APPEALS REVISIONS AND REFERENCES

21. Appeal to the Appellate Assistant Commissioner from orders of Expenditure-tax Officers.—(*1*) Any person :—

(*a*) objecting to the amount of his Taxable Expenditure determined under this Act, or

(*b*) objecting to the amount of Expenditure-tax determined as payable by him under this Act ; or

(*c*) denying his liability to be assessed under this Act ; or

(*d*) objecting to any penalty imposed by the Exdenditure-tax Officer under section 17 ; or

(*e*) objecting to any order of the Expenditure-tax Officer under sub-section (2) of section 19 ; or

(*f*) objecting to any penalty imposed by the Expenditure-tax Officer under the provisions of sub-section (1) of section 46 of the Income-tax Act as applied under section 30 for the purposes of Expenditure-tax ;

may appeal to the Appellate Assistant Commissioner against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner.

(2) An appeal shall be presented within thirty days of the receipt of the notice of demand relating to the assessment or penalty objected to, or the date on which any order objected to, is communicated to him, but the Appellate Assistant Commissioner may admit an appeal after the expiration of the period aforesaid if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(3) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal and may, from time to time, adjourn the hearing.

(4) The Appellate Assistant Commissioner may—

(*a*) at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal ;

(*b*) before disposing of an appeal, make such further inquiry as he thinks fit or cause further inquiry to be made by the Expenditure-tax Officer.

(5) In disposing of an appeal, the Appellate Assistant Commissioner may pass such order as he thinks fit which may include an order enhancing the assessment or penalty :

Provided that no order enhancing on assessment or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) A copy of every order passed by the Appellate Assistant Commissioner under this section shall be forwarded to the Appellant and the Commissioner.

Commentary

Appeal.—This section gives a right to the assessee to appeal to the Appellate Assistant Commissioner against certain assessments or orders of the Expenditure Tax Officer clearly mentioned in the body of this section. The right of appeal unless expressly mentioned in the statute is no inherent right[1]. In certain cases where against an order said to be covered under a particular section, the appeal does not lie, it can be argued that the circumstances of the case bring it under that orbit[2], if they are really so.

In cases of best judgment assessment till the discretion is exercised judicially the Appellate authority can not interfere, unless it can be proved that his action was arbitrary or capricious[3]. In certain cases where an appeal has been filed and the notice of demand is rectified the, appeal remains maintainable and does not become invalid[4].

Form of Appeal.—The appeal to Appellate Assistant Commissioner should be in the prescribed form and should be verified in the prescribed manner.

Prescribed Form.—If the appeals are not in the prescribed form and have not been verified in the manner prescribed, the Appellate Assistant Commissioner may refuse to entertain them. There is no provision in the Act to call the appellant to rectify the mistake[5]. Ordinarily the appeal should be signed and verified by the appellant himself.

Stay Provision.—Pending the appeal under Section 21 of this Act the Expenditure Tax Officer may treat the assessee as not being in default so long as such an appeal is undisposed of[6]. He may thus use his discretion and issue stay orders for the interim period.

Limitation in filing Appeal.—The appeal should be filed within 30 days from the receipt of the notice of demand relating to the assessment or penalty or from the date on which any order is communicated. While computing the days, in the case of assessment where notice of demand is served, the day on which the notice of demand is served and the time requisite for obtaining a copy of the order should be excluded. In case of an order passed under Section 19 (2) that day will not be

1. Hariher Gir *vs.* C. I. T., 1941 I. T. R. 246 ; Bhagat Dunichand *vs.* C. I. T. 4 I. T. C. 33, 37.

2. C. I. T. *vs.* Khemchand Ramdas (1938) I. T. R. 414, 426 (1. C.)

3. Sir Padampat Singhania *vs.* C. I. T. (1953) 24 I. T. R. 141.

4. Mohanlal Haridas *vs.* C. I. T. 4 I. T. C. 90. 382, 409.

5. Damodar Prasad vs. C. I. T., 3 I. T. C. 405.

6. See Section 29 (2) of this Act.

taken into account on which the order is communicated. Time requisite for obtaining a copy will be allowed in this case also. After the expiry of thirty days the appeal can be admitted only if the Appellate Assistant Commissioner condones the delay[1], but he will do so only if he is satisfied that the appellant had sufficient cause for not presenting the appeal. The date of *communication* of order is previousably the date of *service* of order.

Sub-sections (3), (4), (5) and (6).—These sub-section lay down the procedure which has to be followed by the Appellate Assistant Commissioner and also describes his powers.

The Appellate Assistant Commissioner is bound to give a date of hearing to the appellant and shall fix a place for the same[2], he has also a right to give adjournments. Before hearing of an appeal against the order of the Expenditure Tax Officer not accepting the partition of the joint family the Appellate Assistant Commissioner should give notice to all the members of the family[3]. The Appellate authority is authorised under these sub-sections to allow additional grounds in the memorandum of appeal if he is satisfied that the ommission was not wilful and unreasonable[4].

Further inquiry.—The Appellate authority is authorised to make further inquiries in the case as he thinks fit and if he feels that more inquiries should have been made at the assessment stage he may annul the order and send it back to the Expenditure Tax Officer to make assessment after due inquiries.

Further inquiries mean (1) Calling for more evidence (2), Production of accounts, (3) Report of Expenditure Tax Officer, etc., etc.

Power of Appellate Authority.—He may pass such orders which he thinks fit, may enhance the assessment or penalty. No enhancement will be made unless the appellant has been given a reasonable opportunity of being heard and showing cause against such enhancement. "Such orders as he thinks fit" means, he may confirm, reduce, annul the assessment, set aside the assessment, and may direct the Expenditure Tax Officer to make further inquiries and make assessment in the light of the same. Once an appeal is filed it cannot be with drawn out of the fear[5] that the Appellate Assistant Commissioner may enhance the tax.

Enhancing.—Reasonable Opportunity.—Under proviso to stub-section (5) the Appelate Commissioner has been authorised to enhance the assessment or the penalty but he cannot do so unless he has given the assessee a reasonable opportunity of showing cause against such enhancement[6]. It is difficult to define reasonable opportunity because it varies from case to case[7].

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1. C. I. T. vs. Mysore Iron and Steel Works (1949) 1. T. R. 478, 480.
2. Rulherford vs. Lord Advocah 16 T. C. 145, 155.
3. Tuljansa Janardhansa Pawar vs. C. I. T. (1950) I. T. R. 478, 480.
4. Ramgopal Ganpatrai and Sons Ltd. vs. C. E. P. T. (1953) 24 I. T. R. 362.
5. C. I. T. vs. Nawab Shah Nawaz Khan 1938 I. T. R. 370.
6. E. M. Chattyar Firm vs. C. I. T. 4 I. T. C. 111.
7. Sachshidananda Sinha vs. C. I. T. 1 I. T. C. 381.

Enhancement.—The Appellate Assistant Commissioner has the power to enhance assessment[1] or penalty under sub-clause (5). He can use this power of enhancement even in a case which has been remanded to him from the Tribunal[2], but the Appellate Assistant Commissioner cannot open out new sources which are not discussed in the order of assessment and thus due to them cannot enhance the assessment. He has to confine himself to the subject matter of the assessment order in appeal before him[3].

In every case the Appellate Assistant Commissioner has to state facts and give reasons for his findings so that when the order goes in appeal to the Tribunal it may see whether such things have been supported by the facts of the case or not[4]. A copy of the order passed by the Appellate Assistant Commissioner shall be forwarded to the appellant and the Commissioner of Expenditure Tax.

22. Appeal to the Appellate Tribunal from orders of the Appellate Assistant Commissioners.—(*1*) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 21 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.

(*2*) The Commissioner may, if he is not satisfied as to the correctness of any order passed by an Appellate Assistant Commissioner under section 21, direct the Expenditure-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days of the date on which the order is communicated to the Commissioner.

(*3* The Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-sections (*1*) and (*2*) if it is satisfied that there was sufficient cause for not presenting it within that period.

(*4*) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, except in the case of an appeal referred to in sub-section (*2*) be accompanied by a fee of one hundred rupees.

1. In re Lala Sarju Pd. (1943) I. T. R. 525; C. I. T. vs. Bijli Cotton Mills Ltd. (1953) 23 I. T. R. 278 282.

2. Sir Gajalaxmi Ginning Factory Ltd. vs. C. I. T. (1952) 22 I. T. R. 502.

3. Jagarnath Tirani vs. C. I. T., 2 I. T. C. 4. Nawab Shah Nawaz Khan 1938 I. T. R. 370.

4. Ram Pratap Sukhdayal vs. C. I. T. 3 I. T. C. 362; E. M. Chettyar Firm vs. C. I. T. 4 I. T. C. III.

(5) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the assessment or penalty ;

Provided that no order enhancing an assessment or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) A copy of every order passed by the Appellate Tribunal under this section shall be forwarded to the assessee and the Commissioner.

(7) Save as provided in section 25 any order passed by the Appellate Tribunal on appeal shall be final.

(8) The provisions of sub-sections (5), (7), and (8) of section 5-A of the Income-tax Act shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Income-tax Act.

Commentary

Appeal to Tribunal.—This is a stage of the second appeal and it is seen that under this Section appeal to the Appellate Tribunal lies against all orders passed by the Appellate Assistant Commissioner, under section 21. It has been decided that when the first appeal to the Appellate Assistant Commissioner was incompetent the second appeal to the Appellate Tribunal will not lie[1].

At the first stage the right to appeal against the order of the Expenditure Tax Officer has not been given to the department but at the stage of the second appeal the department is also given a right to go in appeal to the Appellate Tribunal against the order of the Appellate Assistant Commissioner of Expenditure Tax, under sub-section (2). No appeal shall be entertained unless it is in the prescribed form and is verified in the prescribed manner, moreover it must be accompanied by a fee of Rs. 100 and the demand of such fee is fully valid[2]. There is no such fee for the department. There is no bar for an appeal being preferred to the tribunal only on facts as it is in certain statutes. Here in this Act the appeal can be preferred on points both of facts and of law and is fully competent[3]. Except in cases where a reference is made to High Court under section 25, the orders of the Appellate Tribunal are

1. Arun Challam Chettier vs. C. I. T. (1953) 23 I. T. R. 180 (S. C.)

2. Shashdri vs. I. T. O. (1954) 25 I. T. R. 400.

3. C. I. T. vs. Sen (1949) I. T. R. 355, Oriental Building and Furnishing Co. vs. C. I. T. (1952) 21 I. T. R. 105.

final. Against the order of the Commissioner passed under section 23, the appeal can be filed before the Appellate Tribunal. The assessee or the department can go in appeal against the order of remand made by the Appellate Assistant Commissioner, remanding it to the Expenditure Tax Officer for further enquiry[1].

Time for Appeal.—The time within which the appeal should be filed to the Tribunal is 60 days from the date of the service of the notice of the orders of the Appellate Assistant Commissioner. In Income Tax law it is the date of communication of the order and not the date of the service of the notice of such order[2]. But "communicated to" seems to mean the same, *i. e.*, the date on which the order is received and not the date on which it is dispatched.

How heard.—After giving opportunity to the assessee and the department, the tribunal will pass such orders thereon as it thinks fit and any such orders may include an order enhancing the assessment or penalty, and in case where an enhancement is to be made, a reasonable opportunity of showing cause against such enhancement, and of producing further evidence, will be given to the assessee.

Fresh grounds.—The tribunal is at liberty to allow additional grounds to be entered in the memorandum of appeal by the assessee, at any stage but such order should be judicial. So where a fundamental question of law, on the existing facts of the case was raised the tribunal did not allow the assessee to do so, but the High Court turned down such order of the tribunal[3]. Points which were not raised before the A. A. C. could not be raised for the first time before the tribunal. If an assessee did not object to the action of the Expenditure Tax Officer in proceeding against him under Section 16 and also did not raise, any objection before the A. A. C., he cannot raise, such objection before the tribunal[4]. The tribunal is fully authorised to consider grounds not set in the memorandum of appeal and on such points the appellant can be heard[5], also.

Order.—A copy of every order passed by the Appellate Tribunal shall be forwarded to the assessse and the Commissioner.

Finality.—All the orders passed by the tribunal shall be final except in cases where it is referred to High Court under reference per Section 25 of the Act.

Tribunal Procedure.—Sub-sections (5), (7) and (8) of Section 5A of the Income Tax Act are for the regulation of the working of the

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1. Jitauram Nirmal Ram vs. C. I. T. (1951) 19 I. T. R. 500.
2. Dhanpatmal Diwanchand vs. C. I. T. (1954) 25 I. T. R. 363.
3. Byramji and Co., vs. C. I. T, 1943 I. T. R. 286.
4. Swami and Co. vs. C. I. T. (1951) 20 I. T. R. 601.
5. Oriental Building and Furnishing Co. vs. C. I. T. 1952 21 I. T. R. 105. (These are cases under Income Tax Law to show what is held correct under the same law there is in Wealth Tax Act.)

(5) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the assessment or penalty ;

Provided that no order enhancing an assessment or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) A copy of every order passed by the Appellate Tribunal under this section shall be forwarded to the assessee and the Commissioner.

(7) Save as provided in section 25 any order passed by the Appellate Tribunal on appeal shall be final.

(8) The provisions of sub-sections (5), (7), and (8) of section 5-A of the Income-tax Act shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Income-tax Act.

Commentary

Appeal to Tribunal.—This is a stage of the second appeal and it is seen that under this Section appeal to the Appellate Tribunal lies against all orders passed by the Appellate Assistant Commissioner, under section 21. It has been decided that when the first appeal to the Appellate Assistant Commissioner was incompetent the second appeal to the Appellate Tribunal will not lie[1].

At the first stage the right to appeal against the order of the Expenditure Tax Officer has not been given to the department but at the stage of the second appeal the department is also given a right to go in appeal to the Appellate Tribunal against the order of the Appellate Assistant Commissioner of Expenditure Tax, under sub-section (2). No appeal shall be entertained unless it is in the prescribed form and is verified in the prescribed manner, moreover it must be accompanied by a fee of Rs. 100 and the demand of such fee is fully valid[2]. There is no such fee for the department. There is no bar for an appeal being preferred to the tribunal only on facts as it is in certain statutes. Here in this Act the appeal can be preferred on points both of facts and of law and is fully competent[3]. Except in cases where a reference is made to High Court under section 25, the orders of the Appellate Tribunal are

1. Arun Challam Chettier vs. C. I. T. (1953) 23 I. T. R. 180 (S. C.)
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final. Against the order of the Commissioner passed under section 23, the appeal can be filed before the Appellate Tribunal. The assessee or the department can go in appeal against the order of remand made by the Appellate Assistant Commissioner, remanding it to the Expenditure Tax Officer for further enquiry[1].

Time for Appeal.—The time within which the appeal should be filed to the Tribunal is 60 days from the date of the service of the notice of the orders of the Appellate Assistant Commissioner. In Income Tax law it is the date of communication of the order and not the date of the service of the notice of such order[2]. But "communicated to" seems to mean the same, *i. e.*, the date on which the order is received and not the date on which it is dispatched.

How heard.—After giving opportunity to the assessee and the department, the tribunal will pass such orders thereon as it thinks fit and any such orders may include an order enhancing the assessment or penalty, and in case where an enhancement is to be made, a reasonable opportunity of showing cause against such enhancement, and of producing further evidence, will be given to the assessee.

Fresh grounds.—The tribunal is at liberty to allow additional grounds to be entered in the memorandum of appeal by the assessee, at any stage but such order should be judicial. So where a fundamental question of law, on the existing facts of the case was raised the tribunal did not allow the assessee to do so, but the High Court turned down such order of the tribunal[3]. Points which were not raised before the A. A. C. could not be raised for the first time before the tribunal. If an assessee did not object to the action of the Expenditure Tax Officer in proceeding against him under Section 16 and also did not raise, any objection before the A. A. C., he cannot raise, such objection before the tribunal[4]. The tribunal is fully authorised to consider grounds not set in the memorandum of appeal and on such points the appellant can be heard[5], also.

Order.—A copy of every order passed by the Appellate Tribunal shall be forwarded to the assessse and the Commissioner.

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5. Oriental Building and Furnishing Co. vs. C. I. T. 1952 21 I. T. R. 105.

(These are cases under Income Tax Law to show what is held correct under the same law there is in Wealth Tax Act.)

Tribunal and they shall apply to the Appellate Tribunal in the discharge of its function under this Act as they apply to it in discharge of its function when the Tribunal works under the Indian Income Tax Act. Section 5-A of the Income Tax Act runs as follows :—

"5-A. (1) *The Appellate Tribunal.*—The Central Government shall appoint an Appellate Tribunal consisting of as many persons as it thinks fit to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of judicial members and accountant members as hereinafter defined :

(3) A judicial member shall be a person who has for at least ten years either held a Civil Judicial post or been in practice as an Advocate of a High Court and an accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (XXXVIII of 1949) or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant :

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub-section ; if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall ordinarily appoint a judicial member of the Tribunal to be President thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the President of the Tribunal.

(6) Save as hereinafter provided a Bench shall consist of one Judicial member and Accountant member :

Provided that the president or any other member of the Tribunal specially authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Income-tax officer in the case does not exceed Rs. 15,000 ;

Provided further that the President may, for the disposal of any particular case, constitute a special Bench consisting either of two Judicial Members and one Accountant member or of one Judicial Member and two Accountant Members.

(7) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority ; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal,

and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the places at which the Benches shall hold their sittings".

23. Powers of Commissioner to revise orders of Expenditure Officers etc.—(1) The Commissioner may, either of his own motion or on application made by an assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry, or cause inquiry to be made, and, subject to the provisions of this Act, pass such order thereon, not being an order prejudicial to the assessee, as the Commissioner thinks fit :

Provided that the Commissioner shall not revise any order under this sub-section in any case—

(*a*) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal can be made has not expired or the assessee in has not waived his right of appeal to the Appellate Tribunal ;

(*b*) where the order is the subject of an appeal before the Appellate Assistant Commissioner or the Appellate Tribunal ;

(*c*) where the application is made by the assessee for such revision, unless—

(*i*) the application is accompanied by a fee of twenty-five rupees ; and

(*ii*) the application is made within one year from the date of the order sought to be revised or within such further period as the Comisioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period ; and

(*d*) where the order is sought to be revised by the Commissioner of his own motion, if such order is made more than one year previously.

Explanation.—For the purposes of this sub-section,—

(*a*) the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner ; and

(*b*) an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(2) Without prejudice to the provisions contained in sub-section (1), the Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by an Expenditure tax Officer is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving to the assessee an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.

(3) No order shall be made under sub-section (2) after the expiry of two years from the date of the order sought to be revised.

Commentary

Scope—In this section Commissioner of Expenditure Tax has been given the power of revision, because from time to time procedural and other small difficulties come up which could be set right earlier by him. So is the case in Income-Tax Act. The Commissioner may revise orders of his subordinates :—

(1) At his own motion.

(2) On application made by an assessee.

He can call for the record of any proceeding under this Act in which an order has been passed by any *authority subordinate to him* and may make such inquiry or *cause such inquiry to be* made.

Then subject to the provisions of this Act, he may pass such order there on which is not *prejudicial* to the assessee.

But under the conditions given below Commissioner will not revise any order :

1. If (*a*) An appeal lies to the Appellate Assistant Commissioner against the order to be revised.

(*b*) An appeal lies to the Appellate Tribunal against the order to be revised and the time within which the appeal can be filed has not expired.

But in case where an appeal lies to the Appellate Tribunal, the Commissioner can entertain an application of revision only if the assessee gives a promise in writing that he will not go in appeal to the Appellate Tribunal.

2. (*a*) Where an appeal is pending before the Appellate Assistant Commissioner.

(*b*) Where an appeal is pending before the Appellate Tribunal.

3. Where on his own motion the Commissioner wants to revise the order, such order should not have been passed more than one year before the date the Commissioner wants to interfere with this order.

Conditions—

(*i*) The application should be accompanied with a fee of Rs. 25.

(*ii*) The application is moved within a year from the date of the order sought to be revised or within such further period as the Commissioner may think fit to allow.

But he will allow such time or condone delay on being satisfied that the assessee was prevented by sufficient cause from making the application within that period.

Under this Sub-section (1) of section 23, the Commissioner cannot pass any order which is prejudicial to the assessee, but any order in which the Commissioner declines to interfere shall not be deemed to be an order prejudicial to the assessee.

The Commissioner under this sub-section can interfere with those orders only which have been passed by an authority subordinate to the Commissioner, but not in an order of Appellate Assistant Commissioner, and but in an Order of A. C. C.

Sub-section (2).—In sub-section (1) the Commissioner on his own motion cannot pass an order which is prejudicial to the interest of the assessee but under sub-section (2) of Sec. 23, the Commissioner on his own motion may call for, and examine the record of any proceeding under this Act, if it is prejudicial to the interest of revenue, and if he considers that any order passed by an Expenditure-tax Officer is erroneous, he may pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.

But any such order cannot be passed unless, the assessee is given an opportunity of being heard and a proper inquiry has been made in this connection. The Commissioner can make inquiry himself or direct the Expenditure-tax Officer to make necessary inquiries.

Sub-sections (1) and (2).—Proceeding.—It is any course of happening of events under the Act.—The matter before the Commissioner may be, assessment, refund, penalties, etc.

Prejudicial order.—"Prejudicial order" is one which places the assessee in a worse position than the one under revision[1].

1. Ramchandram vs. Collector of Ag. Income-tax (1952), 22 I. T. R. 220; Sreeramulu Chetti vs. C. I. T., (1939) I. T. R. 263.

Appeals Pending.—The Commissioner has been restrained from taking any action where appeals are pending before the appellate authorities only with a consideration in case he could do so there may be conflicting orders from two different authorities. This is also with a point of view of protecting the right of reference to High Court by the assessee.

Limitation.—This limitation has been approved by Judicial Courts also[1].

Prejudicial to the Revenue.—These may be the cases of under-assessments, rate applied being wrong, or the expenditure having escaped assessment, it may even mean mistakes apparent from the records.

Restrictions.—The ordinary restriction of time limit has already been discussed. Under Section 23(I) the Commissioner can revise the orders of any authority subordinate to him but under Section 23(2) he can revise the orders of the Expenditure-tax Officer only. If an order of the Expenditure-tax Officer under appeal has been confirmed by the Appellate AssistantCommissoner, the Commissioner cannot disturb such order under Section 23(2)[2].

24. Appeal to the Appellate Tribunal from orders of enhancement by Commissioner.—(*1*) Any assessee objecting to an order of enhancement made by the Commissioner under section 23 may appeal to the Appellate Tribunal within sixty days ot the date on which the order is communicated to him.

(*2*) An appeal to the Appellate Tribunal under sub-section (*1*) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of rupees one hundred.

(*3*) The provisions of sub-sections (*3*), (*5*) (6) and (7 of section 22 shall apply in relation to any appeal under this section as they apply in relation to any appeal under that section.

Commentary

Scope—Under section 23 the Commissioner of Expenditure-tax has been given wide powers and so to see that no harm may be done to the assessee sometimes Section 24 has been brought in. By inserting this section the order of the Commissioner has become appealable before the Appellate Tribunal.

If one is dissatisfied with the order of the Commissioner he can file an appeal against this order before Appellate Tribunal but such appeal should be filed within 60 days of the date on which such order is communicated to him.

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1. Nohilal Jankiram vs. C. I. T. (1940) I. T. R. 437.

2. C. I. T. vs. Tejaji Farusram (1953) 23 I. T. R. 412. The Income Tax case will enable the reader as to how the Sections of this new Act will operate.

This appeal shall be in prescribed form and shall be verified in prescribed manner. It shall be accompanied by a fee of Rs. 100.

Sub-sections (3), (5), (6), and (7), of section 22 of this Act, regarding condoning of delay, hearing of parties, issuing of the copy of orders, and finality of the order and regarding other things contained in the said sub-sections will apply to this section, in the manner they apply there under that section of the Act.

25. Reference to High Court.—(*1*) Within ninety days of the date upon which he is served with an order under section 22, or section 24, the assessee or the Commissioner may present an application in the prescribed form and, where the application is by the assessee, accompanied by a fee of one hundred rupees to the Appellate Tribunal requiring the Appellate Tribunal to refer to the High Court, any question of law arising out of such order, and the Appellate Tribunal shall, if in its opinion a question of law arises out of such order, state the case for the opinion of the High Court.

(*2*) An application under sub-section (*1*) may be admitted after the expiry of the period of ninety days aforesaid if the Tribunal is satisfied that there was sufficient cause for not presenting it within the said period.

(*3*) If, on an application made under sub-section (*1*), the Appellate Tribunal—

(*a*) refuses to state a case on the ground that no question of law arises; or

(*b*) rejects it on the ground that it is time barred;

the applicant may, within three months from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case to the High Court, and on receipt of such requisition the Appellate Tribunal shall state the case:

Provided that, if in any case where the Appellate Tribunal has been required by an assessee to state a case the Appellate Tribunal refuses to do so on the ground

that no question of law arises, the assessee may, within thirty days fom the date on which he receives notice of refusal to state the case, withdraw his application, and if he does so, the fee paid by him under sub-section (1) shall be refunded to him.

(4) The statement to the High Court shall set forth the facts, the determination of the Appellate Tribunal and the question of law which arises out of the case.

(5) If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modifications therein as it may direct.

(6) The High Court, upon hearing any such case, shall decide the question of law raised therein, and in doing so, may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the ground on which such decision is founded and shall send a copy of the judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(7) Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount if any, overpaid as Expenditure-tax shall be refunded with such interest as the Commissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days the result of such reference that he intends to ask for leave to appeal to the Supreme Court makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal in the Supreme Court.

(8) The costs of any reference to the High Court shall be in the discretion of the Court.

(9) Section 5 of the Indian Limitation Act, 1908 shall apply to an application to the High Court under this section.

Commentary

SYNOPSIS

Scope.—The assessee's right to appeal to Appellate Tribunal has been given under two sections of the Act : (*i*) under section 22 the assessee if dissatisfied against any order of the Appellate Assistant Commssioner can file an appeal and so can the Commissioner of Expenditure-tax move an appeal and (*ii*) Under section 24 if the assessee is dissatisfied against the order of the Commissioner.

If any point of law is involved the assessee or the Commissioner of Expenditure-tax, under this section may present an application to the Appellate Tribunal within 90 days of the date upon which the assessee or the Commissioner is served with an order under the section said above. The application should be in the prescribed form, and where it is by an assessee, it should be accompanied with a fee of Rs. 100. The application will contain a prayer to the Appellate Tribunal to refer to the High Court any question of law arising out of the order received by him. On such an application being moved the Appellate Tribunal, will state the case for the opinion of the High Court, if in the opinion of the tribunal a question of law arises out of such order.

Prescribed Form.—Here it is only an application to be moved before the tribunal and so it is to be moved in the prescribed form and is not to be verified, the word 'verified' being thus ommitted.

Under the similar provisions of the Act in Income-tax Law section 66(1) a time of only 60 days has been given to the aggrieved to present an application to the Appellate Tribunal.

Sub-section (2).—The Appellate Tribunal has been given a right to condone the delay if the application is presented after the expiry of a period of 90 days aforesaid. But the tribunal will do so only if it is satisfied that there was sufficient cause in not presenting the application within the said period.

Sub-section (3)—When an application is moved under sub-section (1) of this section the Appellate Tribunal can refuse or reject such application. It can refuse it to be entertained on the ground that no question of law is involved in such an application of reference.

It can reject the application of the ground that it is time barred.

In both the cases, within a period of 3 months from the date on which the applicant is served with a notice of such refusal or rejection as the case may be, he will apply to the High Court giving all the details of such refusal or rejection and pray that instructions be issued to the Appellate Tribunal to state the case to the High Court. The High Court, then on such an application being moved, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, will require the Appellate Tribunal to state the case to the High Court.

Proviso of Sub-section (3)—If the application is refused by the Appellate Tribunal on the ground that no question of law arises out of such reference, the assessee may withdraw his application and if he withdraws the application within 30 days from the date on which he receives notice of refusal to state the case in question, the fee paid under sub-section (1) shall be refunded to him. But if he takes the refund of the fee then he cannot move the High Court under this section if he deposits it again[1].

Note.—It seems that in case the application is time barred the fee deposited is not refundable to the assessee even if he withdraws the application within 30 days of the rejection. In this connection see[2].

Sub-section (4).—The statement to the High Court shall set forth the following (1) the facts of the case, (2) the determination of the Appellate Tribunal, (3) the question or the question of law which arise out of the case.

Sub-section (5).—In case the High Court is not satisfied that the case so stated is sufficient to enable it to determine the questien of law raised therein, the court may refer back the case to the Appellate Tribunal to make such additions thereto or alterations therein as the court may direct in that behalf.

Sub-section (6).—The High Court upon hearing such case, shall decide the question of law raised therein.

While passing the order if it thinks fit, it will alter the form of the question of law and shall deliver judgement upon that; such a judgement will contain the grounds on which such decision is founded. After this it shall send a copy of this judgement to the Appellate Tribunal bearing the seal of the court and the signature of the registrar. On receipt

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1. Wazir Ali Ishabhai *vs.* C. I. T. (1943) I. T. R. 197; Gulamdin and Co. *vs.* C. I. T. (1942) I. T. R. 89. See also In re Rai Saheb Ram Dayal Agarwal (1942) I. T. R. 93. (These are similar cause cases decided under Income Tax Law).

2. *In re.* Ganesh Prasad (1942 I. T. R. 286,

of this order the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to the judgement of the High Court.

Sub-section (7).—Where the amount of assessment is reduced as a result of the reference to High Court, the Commissioner shall refund the amount if any, over-paid as the Expenditure-tax, with the interest which the Commissioner may allow on such amount.

But the Commissioner can postpone the payment of such refund, in case the High Court makes an order authorising the Commissioner to postpone payment of such refund. The High Court will do so only if it receives an intimation from the Commissioner that he wants to ask for a leave to appeal to the Supreme Court in the matter. Information of such intimation from the Commissioner should be received by the High Court within 30 days of the receipt of the result of the reference in question. The refund of the tax will be postponed only till the appeal of the assessee in the Supreme Court is not disposed of.

Sub-section (8).—The High Court is fully authorised to award costs of any such reference as it likes.

Sub-section (9).—Under this sub-section whenever an application is moved to the High Court Section 5 of the Indian Limitation Act 1908 will apply. Section 5 of the Limitation Act runs as follows :—

"**5.** *Extension of period in certain cases.*—Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

For making such reference there is a form under the rules of the Appellate Tribunal. Different High Courts have laid down a procedure for statement of cases and such rules should be consulted before stating a case. The Appellate Tribunal will refer the case to the High Court only on the motion of the assessee or the Commissioner. They cannot do so, of their own accord. Offences and penalties can never be a subject of reference to High Court[1].

Notice and Service.—The period of 90 days for presenting an application for reference runs from the day on which the assessee or the Commissioner is served with a notice of an order of the tribunal under Section 22 or 24. If this order is pronounced in the court in the presence of the assessee or the Commissioner no other notice will be necessary because such an announcement in the open court is a sufficient notice[2].

1. *In re.* Naraindas Mohanlal (1933) I. T. R. 182, 6 I. T. R. 48
2. Lala Hari Kishandas vs C. I. T. (1934) I. T. R. 484.

Fee and Application.—In sub-section (1) the application must be accompanied with a fee of Rs. 100, if the fee is deposited after the period of limitation the application cannot be entertained and the delay in this can not be condone

If the application is posted within the time of limitation and there is delay by the postal authorities the application will be entertained[2]. There is difference of opinion on this point, so see the case of[3].

Right of Reference.—If the assessee any how loses his right of appeal to the Tribunal he cannot move the High Court[4], so also where assessment order of an assessee is set aside by the Tribunal he cannot move the High Court.

Arising out of the order.—This section is attracted only if the order is passed under section 22 and 24. In a case where the order passed under section 31, turned down by Assistant Commissioner and is accepted by the Tribunal, a reference cannot be made to the High Court[5]. As said above, reference under this section can be made only when an application to Tribunal has been refused[6]. If a question has not been raised in the Tribunal it cannot be raised at the stage of reference to High Court[7].

An assessee can not in a haphazered way ask for a reference unless the question of law has been properly stated in the application[8], but if the High Court itself feels to explain a question of law in the applicants case it can very well do so[9]. Actually the High Court works in an advisory capacity[10]. In section 66 (1) of the Income Tax Act a time of 90 days is given to the Appellate Tribunal to refer the case to the High Court. It has been decided that this limit is only directory and the reference made even after this time will be competent, so section 25 of this Act which has been drawn up on those lines, omits the time factor[11].

Where a reference has been made to the High Court and the assessee dies, this reference is not abated by such death. In such cases the court asks the names of the legal representatives of the deceased and issues

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1. Hajee Mahboob Bux Ebban Illahi vs. C. I. T. (1950) I. T. R. 72.
2. Sree Popsingh Rice Mills vs. C. I. T. (1949) I. T. R. 420.
3. Motilal Hiralal vs. C. I. T. (1951) I. T. R. 96.
4. Benarsidas vs. C. I. T. 2 I. T. C. 170.
5. C. I. T. vs. Vellingiri Gounder (1953) 24 I. T. R. 166.
6. Panchu Gopal Banerji vs. C. I. T. 4 I. T. C. 324 ; C. F. leong Mah and Co. vs. C. I. T. 2. I. T. C. 103. Aminof vs. C. I. T. (1938) I. T. R. 474.
7. Sanchand Mulkchand vs. C. I. T. (1938) I T. R. 297 ; *In re*, Lakshmi Narain Gadodia and Co. (1943) I. T. R. 491 ; Abhai Chetti vs. C. I. T. (1947) I. T. R. 442 ; Jamunadhar Poddar and Co. vs. C. I. T. (1935) I. T. R. 112.
8. Debidas Madanlal vs. C. I. T., 7 I. T. C. 132 ; Chainrup Sampatram vs. C. I. T. (1951) 20 I. T. R. 48 ; Swami T. N. and Co. vs. C. I. T. (1951) 20 I. T. R. 601 Madanlal Dharnidharak vs. C. I. T. (1948) I. T. R. 227 ; Madanlal Hiralal vs. C. I. T. (1952) 22 I. T. 448.
9. *In re*, Kishan Kumar Ghosh 5 I. T. C. 295.
10. Ishardas Dharamchand 2 I. T. C. 12.
11. Raja Benoy Sakas Roy vs. C. I. T. (1953) 24 I T. R. 70.

notice to them[1]. As regards the question of awarding the cost, if the court once fixes the cost it could not reopen the matter again, because it was *functus officio*. Questions of costs are to be discussed before the orders are passed under section 66(6) of the Income-tax Act and similar will be the case in this Act; such orders of costs should be passed before the orders are passed under Section 25 (8)[2]. In a case where the party does not present the application of reference the Tribunal in time, the Tribunal cannot condone the delay and the High Court can not touch this poit unless a decision in this respect has been made by the tribunal. Section 5 of the Limitation Act does not apply to such application[3], before tribunal, it applies to cases where an application is moved before a High Court. The application before the Tribunal accompanied with a fee should reach before time but if the money reaches after the period of limitation the application will be time barred[4]. The case of so many assessees cannot be combined in one while making a reference though the cases may be of similar type, and similarly the fee of Rs. 100, each assessee should be sent separately[5]. This fee is for one reference only and a number of point may be raised, the fee is not for each point of law raised or referred but for reference[6].

Costs.—Awarding of costs is at the discretion of the High Court and costs are mostly decided according to the events. It is always the successful party that recovers the costs from the other party, but when the success is partial it is absolutely at the discretion of the court to decide this. In cases where the cost is awarded to the party against the Crown the amount of fee deposited Rs. 100, is included in the costs[7]. Almost all the High Courts have decided likewise.

Appeals and delay.—In cases where an appeal is filed beyond time and the delay is not condoned, the party cannot make the non-condonation of delay a question of law and no reference on this point to the High Court is admissiable but the very question whether the application was time barred and whether the court rightly applied this time bar, can itself be a question of law.

Evidence how used.—If the finding of the tribunal is on the evidence of facts, even if the court comes to some different conclusion on the same facts, it cannot interfere with the decision of the tribunal[8]. As

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1. C. I. T. vs. Varshani (1953) 23 I. T. R. 163.
2. Ramgopal Moolchand vs. C. I. T., 1 I. T. C. 416.
3. Hajee Mahboob etc vs. C. I. T. (1950) I. T. R. 72 ; C. I. T. vs. Yodhraj Bhalla (1953) 23 I. T. R. 371.
4. Hajee Mahbub vs. C.I.T. (1950) I. T. R. 72; *In re.* Lala Ganesh Prasad 1942 I. T. R. 286 ; Sri Posing Rice Mills vs. C. I. T. 1949 I. T. R. 420.
5. C. I. T. vs. Ganga Razu 2 I. T. C. 199.
6. A. R. A. R. S. M. Chokalingam Chetty vs. C. I. T. 1 I. T. C. 392.
7. *In re*, Lachmandas Baburam (1933) I. T. R. 275.
8. American Thread Co. vs. Joyee 6 C. T. 163 (H. L.) ; Williams vs. Davis 26 T. C. 371, 379 ; Great Wester Ry. Co. vs. Bater 8 T. C. 231, 244 (H. L.) ; H. and G. Kaniwas Ltd. vs. Cook 18 T. C. 16, 121 ; C. I. T. vs. Madan (1945) I. T. R. 1,8 ; Govindram Bros Ltd. vs. C. I. T (1946) I. T. R. 764, 772 ; Mehta Parik and Co. vs. C. I. T. (1953) 24 I. T. R. 207 ; Tewari vs. C. I. T. (1953) 27 I. T. R. 630.

said "The evidence however in order that it may support the finding, must be evidence covering all the essential points but if all such points are covered, the quality or sufficiency of such evidences is not a matter for this court" [1]. Whether a particular document is genuine or not can be decided by the Expenditure Tax Officer upon the evidences before him on this point, and deciding this is to come to a finding of fact. Now whether the officer could really come to such a decission, on those facts, is a question of law[2]. In the taxing statutes it is very difficult to find if it is a question of fact or a question of law[3]. The proper legal effect of proved facts is essentially a question of law[4].

Conformably to such judgment.—After the High Court has come to a decision on the points raised in the reference and it has been answered, the Tribunal under Sub-section (6) is to pass such orders as are necessary to dispose of the case conformably to such judgment[5]. After an order, conformably to such judgment is passed by the Tribunal it cannot revise or review its own order.

26. Hearing by High Court.—Where a case has been stated to the High Court under section 25, it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority of such judges.

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the Judges of High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

Commentary

Scope.—Every case referred under Section 25 shall be heard by a Bench of at least two Judges of the High Court and shall be decided in accordance with the opinion of such Judges. In cases where there is a difference of opinion amongst the Judges, the Judges will state such point of law on which they differ and the case upon that point shall

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1. Radha Devi Jalan vs. C. I. T. (1951) 20 I. T. R. 176, 183.

2. Sir Sunder Singh Majathia vs. C. I. T. (1942) I. T. R. 457, 462 (P. C.)

3. Farmer William Cotton Trustees 6 T. C. 590, 600, (H. L.); Lysaghat vs. I. R. 13 T. C. 511, 533 (H. L.)

4. Rakhabchand Rarogi vs. C. I. T. (1947) I. T. R. 465, 474.; C. I. T. vs. Maharaja Viswasher ,Singh (1953) I. T. R. 216. 219. C. I. T. vs. Mansookhlal Zaveri 1937 I.T. R. 664; Sardar Bahadur Inder Singh vs. C.I.T. 1943 I. T. R. 16; Lalitram Mangilal vs. C. I. T. 1950 I. T. R. 286, 294; C. I. T. vs. Erin Estate (1951) 20 I. T. R. 412, 418.

5. C. I. T. vs. Bombay Trust Cop. Ltd. 1936 I. T. R. 323, 334, (P. C.); Basant Rai vs. C. I. T. 5 I. T. C. 441.

then be heard by either one judge or more of the judges of High Court and such point of law shall be decided after all by the majority opinion of *all the Judges*, who have uptill now heard the case.

There is no difference between Section 66 of the Income Tax Act and section 27 of this Act. In a number of Income Tax cases it has been decided that a judgment of High Court under Section 66 is simply advisory[1], and so will that be here under Section 25. Art. 133 of the Constitution of Indiaalso does notlapply such orders because the judgment under Section 66 of I. T. Act or sec. 25 of the Expenditure Tax Act is only a piece of advice and Article 133 of the Constitution of India does not cover such orders. While deciding a reference the High Court does not function as an ordinary Civil Court and so the other provisions of the Civil Procedure Code under application of Section 98 cannot be attracted because after all a judgment under reference is neither a decree or an order . The case can be very well referred to a Full Bench in the absence of a majority and such a reference will be valid[3]. Again there is a little difference between the cases where, (1) it is heard when a reference is made by a Tribunal, and (2) when the party after being refused goes to the High Court directly. In the latter case it is not necessary that the case be heard by a Bench of not less than two Judges.

27. Appeal to Supreme Court.—(*1*) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under Section 25 in any case which the High Court certifies as a fit case for appeal to the Supreme Court.

(*2*) Where the judgment of the High Court is varied or reversed on appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (6) of section 25.

(*3*) The High Court may, on application made to it for the execution of any order of the Supreme Court in respect of any costs awarded by it, transmit the order for execution to any court subordinate to the High Court.

Commentary

Sub-section (1).—In any case where a judgment of the High Court has been delivered on a case stated under Section 25 of this Act, an appeal to the Supreme Court can be filed against it provided the High Court gives a certificate that it is fit case for appeal to Supreme Court.

Sub-section (2).—Once the case has gone to Supreme Court under Sub-section (1) the judgment in the case may be varied or reversed on

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1. Tata Iron and Steel Co. *vs.* The Chief Revenue Authority Bombay (20) I. T. C. 206. ; C. I. T. *vs.* Bombay Trust Crop. (1936) I. T. R. 323 (P. C.).
2. *In re* Kajarimal Kalyandas 4 I. T. R. 50; A.I. R. 1930 All. 221.
3. Umar Buksh *vs.* C. I. T. 5 I. T .C. 402.

such appeal and under such circumstances the effect to such orders of the Supreme Court will be given by the High Court in the manner provided under Sub-section (6) of Section 25.

Sub-section (3).—This Sub-section provides for a method for the realisation of the costs awarded by the Supreme Court. The High Court on an application made to it for any such costs, transit the order for execution to any subordinate Court.

In cases that go to appeal to Supreme Court it will not go beyond the particular question that is referred to High Court (and is passed on to Supreme Court for final orders). The Supreme Court has to work under that orbit only[1].

Special leave to Supreme Court.—In cases where the High Court declines to certify a case to be fit for being sent to Supreme Court under Sub-section (1) of this Section, the party can make an application to the Supreme Court under Article 136 of the Constitution of India, directly. Art. 136 of the Constitution runs as follows :—

Article 136 Special leave to appeal by the Supreme Court—"(1) Notwithstanding any thing in this chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any Judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in Clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the armed forces".

There is a very important case in the Income Tax Law in which the principles governing the grant of special leave to Supreme Court in the matters of Income Tax cases have been fully discussed and this will apply to Expenditure Tax cases, also. The readers will do well to study this case[2], throughly. The High Court grants such certificates only in cases of special importance or in such cases only as will form precedents for numerous other cases[3].

Leave was refused where computation of profits was to be done in a case in which the business was being done partly in Indian states also, because such question was not going to reoccur[4], and thus was not thought of any special importance ; while contrary to this leave was granted in a case[5] where the amount of tax involved was very small, but such a question was to reoccur and a substantial question of law was involved. Under this Section no time limit has been fixed for filing such an appeal to the Supreme Court as mentioned under Sub-Section (1). But the period of limitation under such circumstances is taken as 90 days only along with reference to Section 179 of the Limitation Act.

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1. Kesherdeo Chameria *vs.* C. I. T. 1939 I. T. R. 400 (P. C.),
2. Daleshwari Cotton Mills Ltd. *vs.* C. I. T. (1954) 26 I. T. R. 775.
3. Nattu Keshava Mudaliar *vs*, Govindaswami and others 76 I. C. 811
4. Mishrimal Gulab Chand *vs.* C. I. T. (1951) 20 I T. R. 91.
5. C. I. T. *vs.* Mathias (1938) I. T. R. 8.

CHAPTER VII

PAYMENT AND RECOVERY OF EXPENDITURE TAX

28. Notice of demand.—When any tax or penalty is due in consequence of any order passed under this Act, the Expenditure-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable and the time within which it shall be paid.

Commentary

In persuance of any order passed under this Act the Expenditure-tax Officer has to serve a notice of demand for any tax or penalty due in consequence of such order. This notice is to be served on the assessee or other person who is liable to pay such a sum and secondly the notice has to mention the time within which this money is to be paid. No time limit for issuing such a notice has been given[1], still the notice is to be served within a reasonable time. A notice of demand which was servered 14 months after the end of the assessment year was held to be valid and within reasonable time[2].

As soon as a demand is made such tax or the penalty becomes a debt due to the Government[3], see the words " so payable " used in the Section. This demand is to be paid within the time mentioned in the notice and if not, then in accordance with Section 29 of this Act he will be a defaulter and the proceedings for the realisation of such amount may be taken under Section 30 of this Act. If there is a mistake in the notice of demand, another notice after cancelling the old notice, is valid[4].

29. Recovery of tax and penalties.—(*1*) Any amount specified as payable in a notice of demand issued under section 28 shall be paid within the time, at the place, and to the person mentioned in the notice, or if no time is so mentioned, then on or before the first day of the second month following the date of service of the notice, and any assessee failing so to pay shall be deemed to be in default.

(*2*) Notwithstanding anything contained in this section, where an assessee has presented an appeal under section 21, the Expenditure-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

1. C. I. T *vs.* Khemchand Ramdas (1938) I. T. R. 414, 424 (P. C.)
2. Rajendra Narain Bhanja Deo *vs.* C. I. T. 2 I T. C. 82.
3. Kotak *vs.* C. I. T. (1952) 21 I. T. R. 18.
4. Pratap Chandra Ganguli *vs.* C. I. T. 4. I. T. C, 418.

Commentary

SYNOPSIS

1. Sub-section (1) *2. Sub-section (2)*

Sub-section (1).—This Sub-section provides the time when, and the place where, a tax or penalty mentioned in notice under Section 28 of this Act is to be paid. The time within which the tax is to be paid will be mentioned in the notice of demand and if no such time is mentioned the money demanded is to be paid on or before the first day of the second month following the date of the service of the notice in question.

Sub-section (2).—But if the assessee has filed an appeal under Section 21 it is at the discretion of the Expenditure-Tax Officer not to treat him as defaulter till the appeal is not disposed of. This is actually a provision for granting stay and where an Officer declines to do so he may be compelled by a writ. The Expenditure Tax Officer should use such discretion very fairly[1].

30. Mode of recovery.—The provisions of Sub-sections (*1*), (*1A*), (*2*), (3), (*4*), (*5*), (*5A*), (6), and (7) of section 46 and section 47 of the Income-tax Act shall apply as if the said provisions were provisions of this Act and referred to Expenditure tax and sums imposed by way of penalty under this Act instead of to income-tax and sums imposed by way of penalty under that Act and to Expenditure-tax Officer and commissioner of Expenditure-tax instead of to Income-tax Officer and Commissioner of Income-tax.

Commentary

Scope—This section provides that all the provisions of Sub-sections (1), (1*A*)(2), (3), (4), (5), (5*A*), (6), and (7) of section 46 and section 47 of the Income-Tax Act shall apply in *toto* to this Act and will be read as if referring to Expenditure-tax, sums imposed by way of penalty in Income Tax Act will mean to refer to sums imposed by way of prenalty in Expenditure Tax Act.

Where ever a reference is made in this section to Income-tax Officer or Commissioner of Income-tax, it will be understood means as Expenditure-tax Officer or Commissioner of Expenditure-tax. Sections 46 and 47 of the Income Tax Act are reproduced as follows :—

"**46.** *Mode and time of recovery.*—(1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum

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1. Lord Krishna Sugar Mills Ltd. *vs.* I. T. O. (1952) 22 I. T. R, 410.

not exceeding that amount shall be recovered from the assessee by way of penalty.

(1-A) for the purposes of sub-section (1), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue :

Provided that without prejudice to any other powers of the Collector in the behalf, he shall, for the purpose of recovering the said amount, have the powers which under the Code of Civil Procedure, 1908 (Act V of 1908) a Civil Court has for the purpose of the recovery of an amount due under a decree.

(3) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the State, the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(5) If any assessee is in receipt of any income chargeable under the head "Salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sum so deducted to the credit of the Central Government, or as the Central Board of Revenue directs.

(5-A) The Income-tax Officer may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income-tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Income-tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is, sufficient to pay the

amount due by the tax-payer in respect of arrears of income-tax and penalty or the whole of the money when it is equal to or less than that amount.

The Income-tax Officer may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

Any person making any payment in compliance with a notice under the sub-section shall be deemed to have made the payment under the authority of the assessee and the receipt of the Income-tax Officer shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.

Any person discharging any liability to the assessee after receipt of the notice referred to in this sub-section shall be personally liable to the Income-tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties, whichever is less.

If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, further proceedings may be taken by and before the Collector on the footing that the Income-tax Officer's notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to sub-section (2) of section 46.

Where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Income-tax Officer.

(6) If the recovery of income-tax in any area has been entrusted to a State Government under Article 258(I) of the Constitution the State Government may direct with respect to that area or any part thereof, that income-tax shall be recovered therein with and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of this sub-section (1) of section 42, or of the proviso to section 45, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act.

Provided that the period of one year herein referred to shall—

(*i*) where an assessee has been treated as not being in default under section 45 as long as his appeal in undisposed of, be reckoned from the date on which the appeal is disposed to ;

(*ii*) where recovery proceedings in any case have been stayed by any order of a court, be reckoned from the date from which the order is withdrawn ;

(*iii*) where the date of payment of tax has been extended by an Income-tax authority, be reckoned from the date upon which the time for payment has been extended ;

(*iv*) where the sum payable is allowed to be paid by instalments, from the date on which the last of such instalments was due ;

Provided further that nothing in the foregoing proviso shall have the effect of reducing the period within which proceedings for recovery can be commenced, namely, after the expiration of one year from the last day of the financial year in which the demand is made.

Explanation.—A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to, and for the removal of doubts it is hereby declared that the several modes of recovery specified in this section are neither mutually exclusive, nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the Income-tax Officer, if for any special reasons to be recorded he so thinks fit to, have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode".

[* * * *]

"**47.** *Recovery of penalties.*—Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28, sub-section (6) of section 44-E, sub-section (5) of section 44-F or sub-section (1) of section 46, and any interest payable under the provisions of sub-sections (4), (6), (7) or (8) of section 18-A shall be recoverable in the manner provided in this chapter for the recovery of arrear of tax".

Explanation.—As said before the Sub-sections of this Section provide for imposing penalties on defaulters and prescribes mode and time of recovery of the taxes. Sub-sections (1) and (1-A) of Section 46 of I. T. Act imposes a penalty on defaulters not exceeding the tax in arrear, Sub-Sections (2) to (6) prescribed methods by which taxes can be recovered and Sub-Section (7) lays down limitation period for the commencement of such proceedings. Section 47 only says that penalties and interest also can be realised in the manner laid down for realising other taxes.

Sub-Section (1) and (1-A) of section 46 of I. T. Act.— For imposing penalties under these Sub-Section the orders must be specific and well written. "Tax not paid issue penalty notice" will be an improper order and will not stand[1].

The arrears of tax, penalties and interests can be realised in the following manners :—

1. Kotak N. N. and others vs. C. I. T. (1952) 21 I. T. R. 19.

(1) **As arrears of land revenue.**—The Expenditure Tax Officer has to send a certificate to the Collector under his signature for the defaulter and on receipt of this the Collector arranges to collect this as arrears of land revenue. In the case of[1] the Collector exceeded his powers, issued a distress warrant to a police officer for execution and did not try to realise it as arrears of land revenue, which was not proper[2]. If the defaulter has begun to live in another district the Collector of one district can send the papers for realisation to the Collector of other district under Section 5 of the Revenue Recovery Act 1890[3]. The tax on any man becomes due only when a demand notice under Sections 28 and 29 is made up and serve[4].

Recovery under Civil Procedure Code.—Under Sub-Section (2) the Collector has been given the same powers for the realisation of tax dues as are vested in a Civil Court under the Code of Civil Procedure for collecting decreetal debts.

Other Process.—Sub-sections (3) and (4) of Section 46 I. T. Act.—For certain areas the Commissioner may instruct the Expenditure-Tax Officers to recover the arrears according to the methods by which the Municipal taxes or local rates are realised in that area. The arrest and detention of a defaulter is *ultra vires* the Constitution, because they violate Article 14 of the Constitution. In Madras, Section 48 of the Madras Revenue Recovery Act (1864) was declared *ultra vires* on the plea that it violated Article 22 of the Constitution of India.

Cut from salary.—Sub-section (5) of section 46 of I. T. Act.—By order of the Income-tax Officer the amount of arrear is to be deducted from salary.

State Government—Sub-Section (6) of section 46 of I.T. Act.—Where the State Government is authorised to collect such arrear it may direct authorities to collect it with the local taxes in the manner they are collected.

For those who own money to assessee.—Sub-section (5A) of Section 46 of I. T. Act—.The Income-Tax Officers and so now Expenditure Tax Officers can issue notices to the persons whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the officer an amount of money sufficient to cover the tax due. Any person who pays such sums of money to the taxing authorities can not be brought to court by the assessee and the receipt of the taxing authority will be a good proof of the discharge of the liabilities of such person towards the assessee, to the extent of the amount paid. If

1. Jairam Sahu vs. Emperor I, I. T. C. 201.
2. Vankatramyyaia vs. Collector of Madras (1952) 21 I. T. R. 454.
3. Vankataramyya vs. Collector of Madras, (1952) 21 I. T. R. 454.
4. Doorga Prasad, vs. Secretary of State, (1945) I. T. R. 285, 289 (P. C.)

such a man does not take notice of the Collector and pays the amount to assessee he will be responsible to the taxation department to that extent. But if he refuses to hold or possess such sums on behalf of the assessee the Collector cannot compell him to make payment.

Sub-Section (7) of section 46 of I. T. Act.—According to this Section the proceedings for the recovery of tax due under this Act should commence within one year from the last day of the financial year in which the demand is made. But in cases falling under Sub-Section (1) of 42 and those falling under Proviso to Section 45 such restriction does not apply. For calculating the period of one year see following :—

(1) Under Section 45 an assessee is not a defaulter till his appeal is pending, the period of one year will be calculated from the date on which the appeal is disposed of.

(2) Where the recovery proceedings have been stayed by any order of a court, the year will be calculated from the date from which such order is withdrawn.

(3) Where the date of paying the tax due is extended by the taxing authority, the year will be calculated from the date to which the time for payment was extended.

(4) In cases where the tax due was allowed to be paid by instalments, the year will be calculated from the date on which the last instalment falls due.

The said starting points of limitation are taken in cases where they fall later than the last day of the financial year in which the demand is made. If they fall earlier than the normal starting point, it is the normal starting point that is taken.

Once the proceedings are started within a year they can be completed at any time.

CHAPTER VIII

MISCELLANEOUS.

31. Rectification of mistatkes.—At any time within four years for the date of any order passed by him, or it, the Commissioner, the Expenditure-tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal may, on his, or its own motion rectify any mistake apparent from the record and shall, within a like period, rectify any such mistake which has been brought to the notice of the Commissioner, the Expenditure-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, as the case may be, by an assessee :

Provided that no such rectification shall be made which has the effect of enhancing the assessment unless the assessee has been given a reasonable opportunity of being heard in the matter.

Commentary

Scope.—This section is for the rectification of mistakes apparent from the record. The authorities who can rectify such mistakes are :—

The Commissioner, The Expenditure-Tax Officer, Appellate Assistan Commissioner, the Appellate Tribunal. The Inspecting Assistant Commissioner is not an authority which can rectify such mistakes. It is by two methods that the said authorities can rectify mistakes: (1) by their own motion; (2) by the motion of the assessee to these authorities. The mistakes in the order passed by such authorities can only be rectified but the mistakes should be such as are apparent from the record. The time within which such mistakes can be rectified is 4 years from the date of any such order passed by the said authorities. But no such rectification can be done which has the effect of enhancing the assessment. Where it has such effect a reasonable opportunity of being heard should be given to the assessee, on such matter.

Rectification in what.—Under this section the rectification can be done not only in the order finally passed but in any part of the record or proceeding in the case concerned, provided it is a mistake apparent on the face of the record. The case of[1] is very important in this connection. In this case the assessee himself misguided the department and then applied for the rectification of mistake under this section. It was held that in such a case the section does not apply. A mistake of calculation, is a mistake apparent on record . The Officers said above are not authorised to review their orders under this Section[3]. *Russel C. J.* has nicely said "Mistake is not mere forgetfulness, it is a slip made not by design but by mischance[4]". The rectification in any case has to be followed up and thus the consequential orders can be passed though they may be quite different from the one before[5].

32. Prosecutions—(1) If a person fails without reasonable cause—

(*a*) to furnish in due time any return mentioned in section 13 ;

(*b*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (2) or sub-section (4) of section 1[3] such

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1. Tharikamji Jiwan Das vs. C. I. T. 1 I. T. C., 406.
2. Jissaram vs. C. I. T. 2 I. T. C. 342.
3. C. I. T. vs. Serugan, 1948 I. T. R. 59, 66.
4. Standford vs. Beal, 65 L. J. Q. 74 ; 74 L. T. 406 ; Presscot vs. Lee ; Cf 4B1, Com. 27 (Stroud).
5. Sidhramappa Andannappa vs. C. I. T. (1952) 21 I. T. R. 333.

accounts, records and documents as are referred to in the notice ;

(*c*) to furnish within the time specified any statement or information which such person is bound to furnish to the Expenditure-tax Officer under section 34;

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(2) If a person makes a statement in a verification mentioned in section 13 or section 21 or section 22 or section 24 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with simple imprisonment which may extend to one year, or with fine which may extend to one thousand rupees or with both.

(3) A person shall not be proceeded against for an offence under this section except at the instance of the Commissioner.

(4) The Commissioner may either before or after the institution of proceedings compound any such offence.

Explanation.—For the purposes of this section, "Magistrate" means a Presidency Magistrate, a Magistrate of the first class or a Magistrate of the second class specially empowered by the Central Government to try offences under under this Act.

Commentary

This is a Section for the prosecution of the offenders.

Sub-Section (1).—The offences given are :—

(*a*) If a person fails in furnishing returns mentioned in section 13 of this Act.

(*b*) If a person fails to produce or cause to be produced accounts, records and documents as referred in the notice under Sub-Sections (2) and (4) of Section 15.

(*c*) If a person fails to furnish statement or information to the Expenditure-Tax Officer, as required under Section 34.

Punishment.—Such person who commits any of the offences given above shall be punishable with a fine which may extend to rupees ten for every day during which the default continues. He can be so convicted only by a magistrate. Such a magistrate is either: (1) a Presidency Magistrate, (2) a Magistrate of the first class, (3) a Magistrate of

second class if empowered by the Central Government to try such offences under the Act.

Sub-Setion (2).—But in other cases where under Sections, 13, 21, 22 and 24 of this Act, under verifications he makes a false statement, which he either knows or believes to be false, or does not believe to be true, he is to be punished if once prosecuted because the words used in section are "Shall be punishable". The punishments are of three types—(1) Simple imprisonment which may extend upto one year (2) Fine, which may extend upto rupees one thousand (3) Or both simple imrpisonment and fine.

Any of the said punishment can be given once the person is prosecuted for these offences.

Sub-section (3).—But no person can be prosecuted under this Section unless the Commissioner of Expenditure Tax wants him to be so prosecuted.

Sub-section (4).—The Commissioner can compound the offence by requiring the person concerned to pay an amount agreed upon, as a compounding fee, for such an offence and this can be done any time either before he is prosecuted or even after the prosecution proceedings are started.

Reasonable cause.—It can be said that a reasonable cause is a sufficient cause. If an assessee was asked to produce accounts of its branch at the place where its Head Office is situated, and if he does not produce that under a plea that it will be inconvenient for him to do so, it will not be a reasonable or sufficient cause for not doing so[1]. In case where the assessee took the plea that the books could not be produced as the delay was due to the accounts being non-audited or they were under audit or due to the time taken by extentions being given by the taxing authorities in his case, such pleas could not be held to be valid grounds for a sufficient cause for not filing the accounts[2].

But whether it is a reasonable cause or not, has to be decided by the Magistrate.

Fines.—For fines it will be good to read the case of[3], where *Tuge Best* said "The proper cause seems to me to be to institute further prosecution, if there is occasion for it, and allow the accused an opportunity of defending before the further fine is imposed." This is a case under Municipalities Act. There is another case also under the Cantonment Act, Bombay wherein *Judge Heaton* in case of[4], said "He could of course be convicted with having persisten in the failure only as regards the past, he could not be convicted of a future in regard to the future." Imprisonment in default of fine is proper[5].

1. Lachmandas Baburam *vs.* C. I. T. 2. I. T. C. 35.
2. Manbhum Transport Co. *vs.* C. I. T. 6 I. T. C. 203.
3. R. vs. Veeramma 16, Mad. 230.
4. R. *vs.* Byramjee 43 Bom. 836.
5. In re Lakmia 18 Bom. 400 ; Rv. Rappal 18 Madras 490.

For prosecution under Sub-Section (2) two conditions are necessary (1) the statement given is false, (2) the person making the statement has knowledge or believes this to be false or not true. Where it is merely a case due to misunderstanning, mistake or inadvertence, this Sub-Section will not apply. The Commissioner[1], the Assistant Commissioner and the Expenditure Tax Officer are "Courts" for this purpose.

33. Power to take evidence on oath, etc.—The Commmissioner, the Expenditure-Tax Officer the Appellate Assistant Commissioner and the Appellate Tribunal shall for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :—

(*a*) enforcing the attandance of any person and examining him on oath ;

(*b*) requiring the discovery and production of documents ;

(*c*) receiving evidence on affidavit ;

(*d*) issuing commissions for the examination of witnesses ;

and any proceeding before the Commissioner, the Expenditure-tax Officer the Appellate Assistant Commissioner or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code (45 of 1860).

Commentary

Scope.—By this Section the Commissioner, Expenditure Tax Officer, Appellate Assistant Commissioner, and the Appellate Tribunal have been given the powers of a Court, under the Code of Civil Procedure 1908, but they are limited to trying suits in respect of the matters given in this Section. Any proceeding before the said Officers is a Judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code. Strictly speaking such authorities are not Courts but *Qausi-judicial*-Courts because they have powers of a Court only under special circumstances.

To understand the complications of this section the reader has first to know the powers of a Court under the Code of Civil Procedure 1908 and then to know Section 193 and 228 of the Indian Penal Code.

Sections 193 and 228 of I. P. Code run as under :—

193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial

1. In re Natrajee Aiyar 36 Mad. 72 ; In re Punamchand Maniklal 38 Bom. 642.

proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice."

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence".

"228. **Intentional insult or interruption to public servant sitting in judicial proceeding.**—Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, with fine which may extend to one thousand rupees, or with both".

Section 193 of I. P. C. is for punishing people who give false evidences at any stage of judicial proceedings and those punishments have been laid down, while Section 228 is for punishing those who insult the presiding Officer or who cause any interruption to any public servant in the discharge of his duties. Within the meaning of sub-clauses (*b*) and (*c*) of Section 195 of the Criminal Procedure Code[1], the Income Tax Officer is a "Revenue Court" and is a Tribunal within the meaning of Section 135 of the Civil Procedure Code[2] and so will be a Expenditure Tax Officer, under this Act.

1. Bhiwani Sahai vs. C. I. T. 1936 I. T. R. 222.
2. Lal Mohan Poddar vs. King Emperor 2 I. T. C. 428.

Section 195 of Cr. P. Code runs as follows :—

195. Prosecution for contempt of lawful authority of public servants.—(*1*) No Court shall take cognizance—

(*a*) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate ;

(*b*) *Prosecution for certain offences against public justice*—of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate ; or

(*c*) *Prosecution of certain offences relating to documents given in evidence.*— of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceedings, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(*2*) In clauses (*b*) and (*c*) of sub-section (*1*), the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(*3*) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinarily original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate ;

Provided that—

(*a*) where appeals lie to more than one Court, the appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ; and,

(*b*) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(*4*) The provision of sub-section (*1*), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit them.

(*5*) Where a complaint has been made under sub-section (*1*), clause (*a*), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint."

Section 135 of C. P. Code, runs as follows :—

135. Exemption from arrest under civil process—(1) No Judge, Magistrate or other Judicial Officer shall be liable to arrest under civil process while going to, presiding in, or returning from his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, Mukhtars, revenue agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to, or attending such tribunal for the purpose af such matter, and while returning from such tribunal."

(3) Nothing in sub-section (2) shall enable a judgement-debtor to claim exemption from arrest under an order for immediate execution or where such judgement-debtor attends to show cause why he should not be committed to prison in execution of a decree."

34. Information, returns and statements.—Where, for the purposes of determining the Expenditure-tax payable by any person, it appears necessary for the Expenditure-tax Officer to obtain any statement or information from any individual, Hindu undivided family, company, or any other person, the Expenditure-tax Officer may serve a notice requiring such individual, Hindu undivided family company, or other person, on or before a date to be therein specified, to furnish such statement or information on the points specified in the notice, and the individual, the manager of the Hindu undivided family, the principal officer of the company or other person as the case may be, shall, notwithstanding anything in any law to the contrary, be bound to furnish such statement or information to the Expenditure-tax Officer.

Provided that no legal practitioner shall be bound to furnish any statement or information under this section based on any professional communications made to him otherwise than as permitted by section 126 of the Indian Evidence Act, 1872.

Commentary

Scope—For the purposes of calculating expenditure it often becomes necessary for the taxing authority to get some information and this section helps him in that work. For all such informations as are necessary for this, the officer can issue a notice, specifying date, for the submission of such returns or information on points specified in the notice and such person under this Act will be bound to furnish such returns and give such information within the time mentioned. If he fails to do so within the time he is liable for prosecution under Sub-Section (I) (*c*) of Section 32. A person giving false statement or declaration under Sections 13, 21, 22 and 24 alone is punishable according to Section 32 (2). But if he gives a false statement under Section 34, he could be punished under Section 177 of the Indian Penal Code.

Section 177 of the Indian Penal Code runs as follows :—

"*177. Furnishing false information.*—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Illustration

(*a*) A, landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity to the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause 5, section VII, Regulation III, 1821 on the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Explanation.—In section 176 and in this section the word "offence" includes any Act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 ; and the word "offender" includes any person who is alleged to have been gailty of any such Act."

An Expenditure Tax Officer cannot give a notice under this section to Legal Practitioners and they are not bound to submit any return or furnish any such information about his assessee or his business, except that much as he is permitted under Section 126 of the Indian Evidence Act, 1872. The proviso under this section protects the Legal Practitioners from being pressed by the officer to give information about his business and his whereabout. He is thus given a legal protection so that the assessee may come with open heart to the legal practitioner and explain the truth about the problem of his business.

Section 126 of the Indian Evidence Act, 1876 runs as follows :—

"*126. Professional communications.*—No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition

of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of uch employment :

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal purpose ;

(2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime of fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations

(*a*) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protceted from disclosure.

(*b*) A, a client says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c*) A, being charged with embezzlement, retains an artorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment,

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure."

By Section 126 of the Indian Evidence Act, the Legal Practitioner is protected not to give out only what he has come to know orally from the client but also what he could gather from the papers shown to him[1]. Even if a client during the cross-examination does not claim this privilege, it never means that he has given consent to his legal advisor to disclose such information[2]. The communications must be confidential, to be protected under this section. This privilege also extends to the contents and conditions of documents with which he has become acquinted[3].

1. 1934 Lah. 269—152 I. C. 164 ; 1930 Bom. 88.
2. 1933 Sind 477.
3. 159 I. C. 524.

"The existence of an illegal purpose prevents the privilege from attaching, for it is not the duty of a legal advise to advise his client, how to break the law or to contrive a fraud"[1].

If a notice is given to a bank under this section that bank also will be bound to give such an information as required[2]. Thus under Income-tax Act a bank can be compelled to give such information as will be seen in the case quoted above, so will be the case under Expenditure Tax Act.

35. Effect of transfer of authorities on pending proceedings.—Whenever in respect of any proceeding under this Act any expenditure-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises such jurisdiction, the authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

Commentary

It often happens that during the pendency of a proceeding, the officer who was conducting the case is transferred and another Officer comes up and he takes up the proceedings from the stage at which they were left by his predecessor. To legalise such proceedings this section has been put in. In the Income Tax Act the assessee has a right to be re-heard before the proceedings are restarted by such new officer and before any assessment is made by him. If he likes he can ask that the previous proceedings be reopened, but that is not so in this Act. It should be noted that this section applies to all the authorities of the Expenditure Tax department and not only to Expenditnre Tax Officer, he words being used, "Expenditure-tax Authority".

36. Computation of periods of limitation.—In computing the period of limitation prescribed for an appeal under this Act or for an application under section 25, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

Commentary

Scope—This Section gives the detail for the computation of period of limitation, and the way it is to be computed. In computing the period of limitation for an appeal under this Act or for any application made under Section 27 the following should be excluded.

(*a*) The day on which the order complained of was made.

(*b*) The time required for obtaining a copy of such order.

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1. Taylor, 912.
2. Att. Gen. vs. National Provincial Bank Ltd. 14 T. C. 3.

The law on the commencement of the limitation period seems to be a bit defective. It is wrong to commence the period of limitation from the day when the order was passed because it is difficult for an assessee to know when such an order was passed[1]. In Income-tax Law, where the provisions of the Act are so similar to this, is important on this point. In almost all the cases time given for appeal, is to be computed from the date of the receipt of the order appealed against and it will be unjust if the limitation is computed from a date earlier than that on which the party aggrieved actually came to know of the order or had an opportunity of knowing such order.

As this statute provides for a period of limitation for certain purposes, the Indian Limitation Act will not apply[2], there according to Section 29 of the Limitation Act.

Section 29 (1) and (e) of the Indian Limitation Act runs as follows:—

29. Savings.—(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(*a*) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law ; and

(*b*) the remaining provisions of this Act shall not apply."

Time requisite for obtaining a copy.—If in a case the application for obtaining a copy is not fully stamped or if it is signed by an agent who is not actually authorised to do so, the application will be defective, and in such a case the time that elapses from the date of application to the date of putting the application in order will not be allowed in computing the period of limitation[3]. The time allowed is for obtaining a copy of that order which is complained of and not any other order. The time taken in obtaining a second copy of the same order which is not required for appeal or application will not be allowed[4].

37. Service of notice.—(*1*) A notice of a requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908.

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1. Muthiah Chettiar vs. C. I. T. (1951) 19 I. T. R 402, 404.
2. Lakshmi Sevak Sahu vs. C. I. T. 6 I. T. C. 142.
3. Basant Lal Ramjidas vs. C. I. T. 5 I. T. C. 383 ; Merchant, Flour Mills Co. Ltd. vs. C. I. T. 1937 I. T. R. 459.
4. Swami and Co. vs. C. I. T. (1952) 21 I. T. R. 487.

(2) Any such notice or requisition may, in the case of a Hindu undivided family, be addressed to the manager or any adult male member of the family.

Commentary

SYNOPSIS

1. *Sub-section (1). named.*
2. *By Post.*
3. *Section 27 of G. C. Act.*
4. *Sub-Section (2).*

Sub-section (1).—A notice under this Sub-section may be served on the person named in such notice and can be served by two methods—

(*a*) By Post, (*b*) as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

May be served on the person therein named :—

The words used are "may be served on person" which mean that the service of notice may not be even personal[1]. The notice can be served on the authorised Agent of the assessee[2] and it will be a correct service. But a service of notice on a servant would not be a proper or valid service of notice[3]. A notice affixed on the door of the assessee after making due efforts to find him out will be a valid service of the notice[4].

'By Post'.—"By Post" has been defined in Section 27 of the General Clauses Act and it means by "Registered Post".

Section 27 of the General Clauses Act is reproduced below:—

27. "*Meaning of service by post*—Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expressions, 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the documents, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

1. Rex vs. Ismail Bhai 1 I. T. C. 182.

2. Jangi Bhagat Ramawatar vs. C. I. T. 3 I. T. C. 418; Ramnathan Chettiar vs. C. I. T. 2 I. T. C. 474 ; Himatram Pali Ram vs. C. I. T. 5 I. T. C. 133

3. C. I. T. vs. Day Bros. 1935 I. T. R. 213.

4. S. P. N. C. T. Chettyar Firm vs. C. I. T. 5 I. T. C. 191.

A notice of adjourned hearing by a Expenditure Tax Officer is not a "Notice or requisition" and can be sent by ordinary post[1].

If a notice is sent by registered post and comes back with the remark "refused", it is valid service of notice[2].

Sub-section (2).—This Sub-section mentions, to whom a notice or a requisition be addressed in the case of a firm, Hindu Undivided Family, and any other association of persons. In case of a firm the notice or requisition is to be addressed to any partner and in the case of a Hindu Undivided Family, to the manager or any adult male member of the family ; in case of any other association of persons to the Principal Officer of the said association. In the case of a trust this is to be addressed to the managing trustee[3].

In this Section too the word used is "May" and not "Shall" so the provisions are not mandatory but only permissive. A notice to the minor son by registered post has been taken to be a valid notice[4].

38. Prohibition of disclosure of information.—(1) Subject to the provisions contained in sub-section (2), the provisions of section 54 of the Income Tax Act shall apply to all accounts or in relation to statements, documents, evidence or affidavits given, produced or obtained in connection with or in the course of any proceeding under this Act as they apply to or in relation to similar particulars under that Act subject to the modification that the reference to "any income-tax authority" in clause (*d*) of sub-section (2) and to the "Commissioner" in sub-section (5) of section 54 of that Act shall be construed as areference to any Expenpiture-tax authority and to the "Commissioner of Expenditure-tax" respectively.

(2) Nothing contained in section 54 of the Income Tax Act shall apply to the disclosure of any such particulars as are referred to in sub-section (1) to any person acting in the execution of this Act or the Income Tax Act or the Estate Duty Act, 1953, (or the Wealth Tax Act, 1957), where it is necessary or desirable to disclose the same to him for the purpose of this Act or any of the other Acts aforesaid.

Commentary

This actually ristricts the Expenditure-tax authorities and other public servants of the department from disclosing informations as given there in

1. Perianna Pillai vs. C. I. T. 4 I. T. C. 217 ; Baxiram Rodgmal v C. I. T. 1934 I. T. R. 438.
2. Bhagwan Radhakishan vs. C. I. T. (1952) 22 I. T. R. 104.
3. C. I. T. Ibrahimji Hakimji (1940) I. T. R. 501.
4. De Sauza vs. C. I. T. 6 I. T. C 130.

All such informations about the records of the Expenditure-Tax Department and other proceedings under the act have to be kept confidential and no public servant can be required to produce such records or documents before any Court of Law. This Section has been divided into two parts.

Sub-section (1).—Says that for the above said purposes Section 54 of the Income-tax Act *will apply as such* to this Act with the only change that in place of "Any Income Tax Authority", the words "Any Expenditure Tax Authority" will be put in, in Clause (*d*) of Sub-Section (3) of that Act and so in place of "Commissioner" in Sub-Section (5) of that Act "Commissioner of Expenditure Tax" will be put in.

Sub-Section (2) of this Section lays one restriction. Such restrictions as mentioned in Section 54 of the Indian Income Tax Act about the disclouser of information will not apply to any person acting in the execution of this Act or the Income Tax Act or the Estate-duty Act of 1953 or Weath Tax Act, 1957 where it is necessary or desirable to disclose the same to him for the purposes of this Act or any of the other Acts as mentioned above.

This Section creates confidence in the assessees because they begin to feel that all that they will say about their accounts, assets etc., shall be kept quite confidential. If any public servant discloses any information about the records and proceedings which are treated as confidential, he can be prosecuted after a due sanction from the Commissioner and is punishable with imprisionment which may extent upto six months and is liable to fine also. No Court can call the Expenditure Tax Officer to produce any record of Expenditure Tax Department before the its Court[1].

Leaving the cases given in Sub-Section (3) and those excluded in in Sub-Section (4) of Section 54 and of the Indian Income Tax Act, all the records of the department are confidential. English Law also recognises this practice of keeping the records confidential[2].

The giving of a certified copy of the statement of one partner of the firm to the other partner and his producing such a copy in evidence is not disclosing the confidential information[3]. The assessee can obtain a copy of his statement given to the department, so can his widow[4]. This section is only to check the Income-tax Officers to biteray the confidence[5] of the people but the assessee can himself give out his secrets any time. The assessment orders are public documents and are admissiable as evidence, a certified copy of an order can thus be produced as a valid piece of evidence.

1. Methyli Ammal vs. Janki Ammal (1930) I. T. R. 657, 660 ; Noone Vardarajan Chetty vs. Vutukuri Kanakiah 1939 I. T. R. 331.

2. *In re* Joseph Heigreaves Ltd. 4 T. C. 173 (C. A.); Shaw and Kay 5 T. C. 74 ; Brown's Trustees vs. Hay 3 I. C. 598 ; Christe vs. Craik 37 Sc. L. R. 503 ; Keir vs. Outram 51 Sc. L. R. 8.

3. Venkataramana vs. Varahalu 1939 I. T. R. 560 ; Dinshaw Shroff vs. I. I. T. 1943, I. T. R. 172, 176.

4. Rama Rao vs. Vankataramayya (1940) I. T. R. 450 (F. B.); Vankataraman vs. Varahalu 1939 I. T. R. 560 ; Buchibai vs. Nagpur University 1947 I. T. R. 150.

5. Suraj Narayan vs. Seth Jhabulal 1945 I. T. R. 13.

Section 54 of the Income Tax Act for reference runs as follows :—

54. Disclosure of information by a public servant.—(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given or affidavit or deposition made, in the cource of any proceedings under this Act, other than proceedings under this Chapter or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand prepared for the purposes of this Act, shall be treated as confidential and notwithstanding anything contained in the Evidence Act, 1872 (1 of 1872) no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts documents or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine.

(3) Nothing in this section shall apply to the disclosure—

(*a*) of any such particulars for the purposes of a prosecution under the Indian Penal Code (XLV of 1860) in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(*b*) of any such particulars to any person acting in the execution of this Act or of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), where it is neccessary or desirable to disclose the same to him for the purposes of either this Act or the Taxation on Income (Investigation Commission) Act, 1947, or

(*c*) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

(*d*) of any such particulars to a Civil Court in any suit or proceeding to which Government or any Income-tax authority is a party which relates to any matter arising out of any proceeding under this Act or any other law for the time being in force authorising any Income-tax authority to exercise any powers thereunder, or

(*e*) of any such particulars to the Comptroller and Auditor-General of India for the purpose of enabling him to discharge his functions under the Constitution; or

(*f*) of any such particulars to any officer appointed by the Comptroller and the Auditor-General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(*g*) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850 (XXXVII of 1850), or to an Officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of any such inquiry, or

(*gg*) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a lawyer or chartered accountant to the authority referred to in sub-section (3) of section 61, when exercising the functions referred to in that sub-section, or

(*h*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899 (II of 1899), to impound an insufficiently stamped document, or

(*i*) of such facts to an authorised officer of the United Kingdom, or of any part of His Majesty's Dominions which has entered into an agreement with India for the granting of double taxation relief, as may be neccessary for the purpose of enabling such relief or a refund under section 49 or section 49-AA of this Act to be given, or

(*j*) of such facts, to an officer of a State Government, as may be necessary for the purpose of enbling that Government to levy or realise any tax imposed by it, or

(*k*) of such facts, to any authority exercising powers under the Sea Customs Act, 1878 (VII of 1878), or any Central Act imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(*l*) of such facts, to any person charged by law with duty of inquiring into the qualifications of electors as may be necessary to establish whether a person is or is not entitled to be enterred on an electoral roll, or

(*m*) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular years where under the provisions of any law for the time being in force such fact is required to be established, or

(*n*) of such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics of international investment and balance of payments, or

(*o*) of such information as may be required by any officer or department of the Central Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant, or

(*p*) of any such particulars to the Custodian of Evacuee Property appointed under the administration of the Evacuee Property Act, 1950, (XXXI of 1950) for the purpose of enabling him to discharge the duties imposed upon him by or under the said Act.

(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed or the record of any statement or deposition made in a proceeeding under section 25-A or section 26-A, or to the giving of evidence by a public servant in respect thereof.

(5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

39. Bar of jurisdiction.—No suit shall lie in any civil court to set aside or modify any assesssment made under this Act, and no prosecution, suit or other legal proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

Commentary

This Section has actually two parts :—

(1) No suit *shall lie* in a Civil Court to set aside or modify any assessment made under this Act.

(2) No prosecution suit or other legal proceeding shall lie against any officer of the Government for any thing done in good faith or intended to be done in good faith under this Act.

In part one words used are "Shall lie" which means that no suit in a Civil Court can be brought about, for setting aside or modifying an assessment. But if it can be proved that a certain order is not an assessment, a suit, then can be filed in a Civil Court alright. Summery proceedings under Section 30 of the Act and penalty orders under Section 17 are no assessment and for them a suit lies in a Civil Court. Assessments which may be even very bad from the point of equity and might have not been done in good faith cannot be disturbed by Civil Courts and the person aggrieved has to take to departmental remedies[1]. When all the remedies under the Act are exhausted he may take protection if at all of the Civil Courts[2]. But in case where no assessment is actually made and only a notice is given for filling returns as mentioned in the well known case of *Bengal Immunity Co.Ltd.vs. State of Bihar Under Sales Tax Act* the party can take recourse to Civil and other courts[3]. The case of the *State of Tripura* v. *Province of East Bengal* is very important on this point[4]. In this the Supreme Court has held "Where a person has been served with a notice calling for a return of income, it open to him to file a suit for a declaration that the provisions of law under which he is sought to be assessed is *ultra vires* and *void* and for a perpetual injection to restrain the state and the taxing authority, from taking any steps to assess him." In this the Supreme Court clearly said that such a suit is not suit for modifying or setting aside the order of assessment.

The second part gives immunity to Government Officers for any thing done in good faith, or intended to be done under the Act. Let us see what "Good Faith" means. Under Section 3 (20) of the General Clauses Act this has been defined'a thing shall be deemed to be done in good faith where it is in fact done honesty, whether done negligently or not'.

1. R. N. Singha vs. Secretary of State for India 2 I. T. C. 462.
2. Holborn Viaduct vs. R. 2 T. C. 228.
3. Inderchand vs. Secretary of State (1941) I. T. R. 673.
4. The State of Tripura vs. Province of East Bengal (1951) 19 I. T. R. 132, 142, 3, 167.

Where an Expenditure Tax Officer detains books produced before him believing that he can do so, it is in good faith and he will be protected[1], but if he knows that he could not do so and then does it only to harras the assessee it will not be said to have been done in good faith[2].

In 1850 under Section 8 of the East India Company's Act 1780 there is a very interesting case of *Spooner* vs. *Juddow* where sufficient light on this point was thrown.

"I agree that if a person knows that he has not under statute authority to do so a certain thing and yet intentionally does that thing, he cannot shelter himself by pretending that the thing was done with intention to carry out that statute."

If the correct position in a certain case is made known to the officer and even then he works against that he cannot be protected under this Section[3]. But if an Expenditure-tax Officer with full faith does things even out of his jurisdiction innocently, he will be protected only because it is done in good faith[4]. Under Article 226 of the Constitution of India High Courts can issue Writs of *Prohibition*, *Certiorari*, *Mandanms* or other suitable writs and so can Supreme Court do under Article 32, but where a specific remedy is open to the aggrieved under the Act no court can exercise its power under such matters[5]. In case where the officer has worked with out jurisdiction the High Court can issue such writs alright[6]. If in a recovery proceeding the assessee has been detained illegally a writ is the proper remedy[7].

Section 39 Whether ultra vires.—This Section of the Expenditure-Tax Act is similar to Section 67 of the Indian Income Tax Act and a very important case of *Dr. R. N. Singha* vs. *Secretary of State*[8] has been decided on this point in which it has been clearly said that this Section is not *ultra vires*.

Under section 32 of the Government of India Act 1858 "Every person shall have the same remedy against the Secretary of State for India in Council as he might have had against the East India Co., if the Government of India Act 1858 had not been passed." This section was replaced by section 177 of the Government of India Act 1935 and now by Article 300 of the Constitution of India. The same thing applies to section 39 of the Expenditure Tax also. This is not *ultra vires*.

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1. Pragdas Mathuradas vs I. T. O. 1950 I. T. R. 757.
2. Spooner vs. Juddow (1950 (1850) 4 M. I. A. 353.
3. Governer General in Council vs. Shiromani Sugar Mills Ltd, 1946 I. T. R. 248, 265 (F. C.); Pragdas Mathuradas vs. I. T. O. (1950) I. T. R. 787, 762
4. Secretary of State vs. Mayaappa Chettier (1936) I. T. R. 341, 352 ; Kesari chand Kavalram vs, Nayudu 1942 I. T. R. 413.
5. Rashid and Sons vs. I. T. Inv. Com. (1954) 25 I. T. R. 167, 174 (S. C.) ; Lala Lachmandas Nayar *In re*, (1952) 22 I. T. R. 418 ; Basant vs. Advocate General of Madras I.L.R. 43 Madras 146, 160 (P. C.) ; ReKi vs. I. T. O. (1950) I. T. R. 618, 633 ; *In re* Ramjidas Mahaliram 1936 I.T.R. 25, 43 ; Rex vs. Inspector of Taxes for Kingsland 8 T. C. 327 ; Rashid Ahmad vs. Municipal Board Kairana (1950) S. C. R. 566. 572 (S. C.)
6. King vs. Brixton I. T. Comr. 6 T. C. 195 ; Dinshaw Shroff vs. C. I. T. 1943 I.T.R. 172 ; Thyagaraja Chettiar vs. Collector of Madras 1935 36 I. T. R. 56.
7. Erimal Ibrahim Hajee vs. Collector of Malabar (1954) 26 I. T. R. 509.
8. 2 I. T. C. 462.

40. Appearance before Expenditure-tax authorities by authorised representatives—Any assessee who is entitled to or required to attend before any Expenditure-tax authority or the Appellate Tribunal in connection with any proceeding or inquiry under this Act, except where he is required under this Act to attend in person, may attend by a person authorised by him in writing in this behalf, being a relative of, or a person regularly employed by, the assessee, or a legal practitioner or a chartered accountant or any other person having such qualifications as may be prescribed.

Explanation—For the purposes of this section,—

(*a*) the expression "a person regularly employed by the assessee" includes any officer of a scheduled Bank with which the assessee maintains a current account or has other regular dealings;

(*b*) "chartered accountant" means a chartered accountant as defined in the Chartered Accountants Act, 1949.

Commentary

Scope—This section regulates the appearence of authorised representatives before the Expenditure-tax authorities or the Appellate Tribunal in connection with any proceeding under this Act. The persons authorised to appear under this Act are (1) a relative (2) a person regularly employed by the assessee, (3) a legal practitioner, (4) a chartered accountant, (5) any other person having such qualifications as may be prescribed.

The representative must be authorised by the assessee in writing. The usual practice in the income tax department is that the authorisation is not proper unless it is on a general-stamp paper of the value of Rs. 2 and anans 8 and is signed by the assessee and the agent. The assessee adresses this to the Income Tax authority and in this Act he will address it to Expenditure-tax authority that such person is his authorised agent, will present his books of accounts and if necessary will give statement on oath which shall be binding on him and his firm. The agent accepts this and signs at the end.

The representative thus duly authorised will attend all the proceedings and inquries on behalf of the assessee except in cases where he is called under Section 33 of the Act to appear in person. The work for which such a representative is authorised should be mentioned in the authority letter. Where such representative of the assessee is not duly authorised to take a copy of the order or judgment of the Expenditure Tax Officer he cannot take such a copy only because he appeared for the assessee in the assessment proceedings[1]. Such power should be expressly mentioned. But if he is authorised for doing a thing, he can very well do it and that will be accepted. A representative was duly authorised to make a compromise and he entered into one, it was accepted

1. Basant Lal Ramjidas vs. C. I. T. 5 I. T. C. 383, 388.

but then it was a binding on the assessee too[1]. The chartered accountants appearing in such cases have the same status and the capacity as the lawyer or advocates[2], appearing for the parties in the law courts. It is only in very few cases that the officers of the Bank appear on behalf of the assessee but by explanation (a) of the section they have been authorised to appear as they are covered under the expression "A person regularly employed by the assessee", but the officers of only such bank can appear in which the assessee has got his current account or his other regular dealings with the bank. The Central Government is contemplating to allow certain other classes of persons also to work as authorised representatives, for whom the qualifications may be prescribed at some later date by the Central Board of Revenue. In Income-tax proceedings, there is another privileged class known as Income-tax Practitioners (I. T. Ps.) who appear for the assessees and an I. T. P. is defined under Sub-Section 2 (iv). It is possible that such people who have been practicing as I. T. Ps. since long may be allowed to work here also because of their experience and the knowledge of taxation law. In Sales Tax Law of U. P. such people are known as recognised agents. No protection to such recognised agents as a class has yet been given under the U. P. Sales Tax Act though in most of the other States of India they have the same status under the Sales Tax Act as the I. T. Ps. in Income Tax Law. Authorised representatives under this Act can appear before Tribunal also. They have a right to act, and plead both on behalf of the assessee, whom they represent.

41. Power to make rules—(*1*) The Board may, by notification in the official *Gazette*, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(*a*) the form in which returns under this Act shall be made and the manner in which they shall be verified;

(*b*) the form in which appeals and applications under this Act may be made, and the manner in which they shall be verified ;

(*c*) the form of any notice of demand under this Act ;

(*d*) any other matter which has to be, or may be, prescribed for the purposes of this Act.

(*3*) All rules made under this Act shall be laid before each House of Parliament, as soon as may be, after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

Commentary

Sub-section (1).—The Central Board of Revenue has been authorised to make rules, where-ever necessary (note the use of the word

1. Hasan Banu Bibi vs. C. I. T. 1940 I. T. R. 482.
2. C. I. T. vs. Dandikar (1952 22 I. T. R. 235.

'may') and the purpose of such rules will be to see that the different provisions of the Act are carried on properly. But such rules shall be made by publication in the official *Gazettee*. The rules thus published will have effect as if incorporated in the Act. But all such rules made will be subject to the control of the Parliament vide Sub-section (3).

Sub-section (2).—The Board as said above could make rules for carrying out the purposes of this Act and without any prejudice to such powers, the rules may be made for (*a*) the form of returns and the manner they have to be verified (*b*) the forms of appeal and application and the varification there in, (*c*) form of notices (*d*) for carrying out any other matter or purpose of the Act.

Sub-section (3).—All such rules made for carrying out the purposes of this Act have to be laid before both the Houses of the Parliament and the Parliament has the full power to modify them. Such rules made have to be placed before the Parliament soon after they are made and the modifications in them are to be made during the session in which they are so laid or the session immediately following.

"Without prejudice to the generality of the foregoing power.— All the rules made should not be beyond the mandate given to the Central Board of Revenue and should be consistant with the provisions.

Rules.—Something has been said about the rules in the begining but still the following should be kept in mind :—

1. The rules are as effective as the Section of the Act[1].
2. The interpretation of the rules should be along the lines of the Sections under which or for which they are made[2].
3. No such rules should be made which adversely effect the Section of the Act[3].
4. No court can go into the question of examining the fairness, propriety or reasonableness of such rules made[4].

THE SCHEDULE

(*See* section 3)

RATES OF EXPENDITURE-TAX

In the case of every individual and Hindu undivided family, on that portion of the taxable expenditure—

(*i*) which does not exceed Rs. 10,000 ...	10%
(*ii*) which exceeds Rs. 10,000 but does not exceed Rs. 20,000	20%
(*iii*) which exceeds Rs. 20,000 but does not exceed Rs. 30,000	40%
(*iv*) which exceeds Rs. 30,000 but does not exceed Rs. 40,000	60%
(*v*) which exceeds Rs. 40,000 but does not exceed Rs. 50,000	80%
(*vi*) which exceeds Rs. 50,000	100%

1. Subha Rao *vs.* C. I. T. (1951) 20 T. R. 337 ; P. K. N. P. R. Chettiar *vs.* C. I. T. 4 I. T. C. 340, 343. ; A. R. A. N. Chettiar *vs.* C. I. T. 2 1. T. C. 477, 479 ; Indra Singh Trust *vs.* C. I. T. (1954) 26 I. T. R. 670, 678.
2. C. I. T. *vs.* Central Popular Association Co. Ltd. 1939. I. T. R. 293, 300.
3. North British and Mercantile Insurance Co. *In re* 1937 I. T. R. 349, 383 ; 4 Behari Lal Mallic *vs.* 2 I. T. C. C. I. T. 328, 336.
4. Subha Rao *vs.* C. I. T. (1951) 20 I. T. R. 337.

DETAILED SUMMARY OF SELECT COMMITTEE REPORT

On

EXPENDITURE TAX

Bill No. 15-A of 1957 was introduced in the Lok Sabha on 15th of May, 1957 and on the motion of Hon. Sri T. T. Krishnamachari, Finance Minister it was handed over to a Select Committee on 17th May, 1957. The Committee held 12 sittings in all to hear the evidence of different Associations. In the sittings held on 31st July and 20th August, 1957 the Committee made a general review of all the provisions of the Bill and then finally adopted the report on 25th of August, 1957.

Composition of the Select Committee

1. Shri Asoke K. Sen—*Chairman.*
2. Shri H. C. Heda
3. Shri Prafulla Chandra Borooah
4. Shri R. Jagannath Rao
5. Shri Muhammad Khuda Buksh
6. Shri Narendrabhai Nathwani
7. Shri Shivram Rango Rane
8. Shri Anand Chandra Joshi
9. Dr. G. S. Melkote
10. Shri G. S. Musafir
11. Shri G. D. Somani
12. Shri Radheshyam Ramkumar Morarka
13. Shri Feroze Gandhi
14. Shri C. D. Pande
15. Shri Tribhuan Narayan Singh
16. Shri R. M. Hajarnavis
17. Shri M. R. Krishna
18. Shrimati Tarkeshwari Sinha
19. Dr. Ram Subhag Singh
20. Shri Nemi Chandra Kasliwal
21. Shri Saif F. B. Tyabji
22. Shri Fatehsinhrao Pratapsinhrao Gaekwed
23. Shri K. Periaswami Gounder
24. Shri B. R. Bhagat
25. Shri U. Srinivasa Malliah
26. Shri N. G. Ranga
27. Shri T. C. N. Menon
28. Shri Prabhat Kar
29. Shri Bimal Comar Ghose
30. Shri Laisram Achaw Singh
31. Shri R. K. Khadilkar
32. Shri M. R. Masani
33. H. H. Maharaja Sri Karni Singhji of Bikaner
34. Dr. A. Krishnaswami
35. Shri T. T. Krishnamachari

The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

2. **Clause 2**—(1) *item* (*g*)—The Committee feel that the husband or wife of the assessee, as the case may be, should also be included in the category of dependants.

The item has been amended accordingly.

(2) *item* (*h*)—It has been clarified that the expenditure liable to tax will include expenditure incurred in cash or on credit.

(3) *item* (*n*)—The Committee feel that the definition of 'previous years' should also cover an accounting year which ends after the commencement of the assessment year.

The item has been amended accordingly.

(4) *New item* (*o*)—A definition of 'taxable expenditure' which is the basis of the charge has been added.

2. **Clause 3**—The proviso to this clause as in the original Bill provided that no expenditure-tax would be payable if the total income under the Income-tax Act did not exceed Rs. 60,000. While agreeing that such a proviso is necessary to prevent harassment to assessees and to make the administration of the Act somewhat easier, the Committee feel that no distinction is necessary between income liable to income-tax and that which is not so liable. In the opinion of the Committee, what should be taken into account is the available income from all sources including receipts of a casual and non-recurring nature.

Accordingly, after obtaining the recommendation of the President under article 117 (1) of the Constitution, the proviso has been amended restricting the liability to expenditure-tax to only such persons whose net income from all sources after the payment of taxes exceeds rupees thirty-six thousand.

The new sub-clause 2 is clarificatory in nature.

3. **Clause 4.**—The Committee feel that small items of expenditure incurred for the benefit of the assessee when the total amount thereof does not exceed rupees five thousand in any year should not be included in the taxable expenditure.

Paragraph (i) has been amended accordingly.

Under clause 5, gifts, donations etc., are exempted from expenditure-tax. Consequently, the Committee feel, that provision should be made whereby expenditure incurred for the benefit of the assessee or any of his dependants out of gifts, donations etc., made by the assessee should be treated as the expenditure of the assessee as otherwise it may be possible for an assessee to avoid expenditure-tax if instead of directly incurring the expenditure on his family, he makes the gift to a dependant for incurring expenditure on the personal requirements of himself or a dependant.

Paragraph (ii) which is inserted after obtaining the recommendation of the President under article 117 (1) of the Constitution makes provision for preventing such evasions.

The explanation to this clause makes it clear that it is not its intention to include within its scope any expenditure by way of customary hospitality or any expenditure which is of a trivial or consequential nature.

4. Clause 5—This clause exempts expenditure of certain kinds from expenditure-tax. The original clause provided for exemption of certain items. The Committee feel that the list of items in the original clause should be expanded to cover expenditure of various kinds which are of a somewhat impersonal nature and should therefore be exempted. The original clause has therefore been substituted by a new clause.

The original items have been retained with certain modifications by way of amplification.

The new items of expenditure which in the opinion of the Committee should also be excluded from the Expenditure-tax are items relating to matters like expenditure on products of cottage industries, payment of premiums on certain types of policies, purchase and maintenance of live-stocks, expenditure for any public purpose of a charitable or religious nature, certain types of entertainment allowance, expenditure out of privy purses in certain cases and expenditure in connection with elections.

The new items (*b*), (*c*), (*d*), (*g*), (l), (*m*), (*n*), (*q*) and (*r*) make provision for this purpose.

5. Clause 6—*Sub-clause* (*1*). (1) *Item* (*a*)—This corresponds to original item (*a*) with the modification that the provision requiring fines or penalties to be included in the taxable expenditure has now been omitted.

(2) *New item* (*b*). In the opinion of the Committee, any expenditure in connection with civil and criminal proceedings to which an assessee is a party should not be liable to expenditure-tax.

(3) *Item* (*c*) *[Original item* (*b*)*]*. This modifies the original item by including the marriage expenses of the assessee himself also and incidentally clarifies it.

(4) *Item* (*d*). This corresponds to original item (*c*).

(5) *New items* (*e*), (*f*) *and* (*g*). These are new items and they provide for the deduction of expenditure incurred on the maintenance of one's parents, on the medical treatment of the assessee or any of his dependants or parents and in respect of education of any dependant abroad.

(6) *Item* (*h*) *[Original item* (*d*) *]*. The original item did not provide for any ceiling, but merely provided a basic allowance of rupees twenty-four thousand plus a further allowance if claimed, of rupees five thousand in respect of each dependant.

The Committee feel that an individual should be allowed a basic allowance of rupees thirty thousand and in the case of a Hindu undivided family, the basic allowance should be rupees thirty thousand for the

Karta and his wife and children plus rupees three thousand for every additional coparcener limited to a ceiling of rupees sixty thousand for the family as a whole.

This item has been amended accordingly after obtaining the recommendation of the President under Article 117 (1) of the Constitution.

(7) *New item* (*i*). The Committee feel that expenditure incurred outside India by persons who are not citizens of India but are resident in India should be allowed to be deducted subject to a limit of rupees ten thousand to the extent to which such expenditure is not admissible under any other items in this clause.

This item makes provision in this behalf.

New Sub-clause 2—The Committee feel that expenditure-tax being a new levy, persons who have been accustomed to a high standard of living in the past make take some time to adjust themselves to new standards. It is, therefore, desirable to give them some time to adjust their expenditure. It is therefore proposed to give them an option of claiming that the deductions under this clause in their case will be equal to 75 per cent. of the average annual expenditure of the last three years or rupees seventy-five thousand, whichever is less.

New Sub-clause 3.—This provides for the gradual lowering of this limit of rupees seventy-five thousand until it is brought down to the level of the allowances otherwise permissible.

New Sub-clause 4.—This provides for relief in cases where taxes have been paid in any foreign country under any law relating to income, wealth or expenditure.

6. With respect to the procedural clauses of the Bill, the Committee feel that they should follow the pattern of the Wealth-tax Bill as amended by the Select Committee.

7. Clause 8, 9 and 10.—The amendments made in these clauses are clarificatory.

8. Clause 15.—This amendment seeks to bring sub-clause (4) into line with the Indian Income-tax Act, 1922, so that the notice calling for accounts etc. is not issued to an assessee until he has made the voluntary return or has been served with a special notice for making such a return.

9. Clause 16.—The Committee feel that in order to avoid any harassment or hardship to the assessee, a time limit should be fixed for reopening cases of expenditure escaping assessment. A period of eight years in respect of cases falling under clause (*a*) and four years in respect of cases falling under clase (*b*) appear to be reasonable for this purpose in the opinion of the Committee.

The clause has been amended accordingly.

10. Clause 17.—This clause should vest the powers which are now vested in the Expenditure-tax Officer on the Appellate Assistant

Commissioner, Commissioner and the Appellate Tribunal also. This is in accordance with a similar provision in the Indian Income-tax Act, 1922.

12. **Clause 13.**—The amendment proposed in sub-clause (3) seeks to clarify that the executor or legal representative of a deceased person is also obliged to file the voluntary return.

13. **Clause 19.**—Sub-clause (1) has been amended to bring it in line with the Indian Income-tax Act, 1922, with respect to partition of Hindu undivided families.

14. **New Clause 20.**—The Committee have inserted this new clause to provide for settlement of expenditure-tax payable in the case of rulers of former Indian States who are in receipt of privy purses, in whose cases it may ordinarily be difficult to determine the quantum of expenditure incurred out of the privy purse which is liable to a deduction under clause 5(*q*). In such cases, the Central Government has been empowered to settle their tax liability appropriately.

15. **Clause 21 (Original clause 20).**—(1) **Sub-clause** (1).—The Committee feel that there should be provision for an appeal to the Appellate Assistant Commissioner against the levy of penalty for non-payment of expenditure-tax within the time specified.

A new item (*f*) in this sub-clause has accordingly been inserted.

(2) **Sub-clause** (4).—The Committee feel that at the hearing of an appeal, the appellant should be permitted to go into any fresh ground not specified in the grounds of appeal.

The sub-clause has been re-cast accordingly.

(3) **Sub-clause** (5).—The amendment is clarificatory in nature.

16. **Clause 22 (Original clause 21).**—The Committee feel that there should be provision for condonation of delay by the Appellate Tribunals in cases of appeals presented out of time, if there is reasonable cause for the delay.

A new sub clause (3) has been inserted accordingly.

17. **Clause 23 (Original clause 22).**—The Committee feel that following the pattern of the Indian Income-tax Act, the Commissioner should be empowered to revise the order of the subordinate Expenditure-tax authority, even if such a revision is in favour of the assessee.

The clause has been re-cast accordingly.

18. **Clause 25 (Original clause 24).**—The amendment provides that the Commissioner of Expenditure-tax may also apply for a reference to a High Court.

19. **Clause 30 (Original clause 29).**—It has been clarified that the penalty levied under the Expenditare-tax Act also may be recovered in the same manner as under the Indian Income-tax Act.

20. Clause 32 (Original clause 31).—The Committee feel the specific punishment under the Expenditure tax Act in cases where a person who is bound to furnish information on demand under Section 34 fails to do so, should be provided for.

A new item (*c*) in sub-clause (1) has accordingly been inserted.

21. Clause 34 (Original clause 33).—The Committee consider that any communication between a lawyer and his client should not be required to be disclosed.

A proviso has accordingly been added to this clause.

22. Clause 39 (Original clause 38).—The words "save as otherwise provided in this Act" have been omitted, being unnecessary.

23. Clause 40 (Original clause 39).—The Committee feel that in addition to the persons or class of persons mentioned in the original clause as authorised representatives of the assessee, any other person having such qualifications as may be prescribed by rules made under this Act should also be permitted to function as an authorised representative.

The clause has been amended accordingly.

The Select committee recommend that the Bill as amended be passed.

Only 5 members gave dissenting notes. Summery of these notes is very important and has been given for the benefit of the readers so that they may understand the spirit of the law made finally. Important among those who gave dissenting notes were Mr. M. R. Masani, Mr. A. Krishnaswami, Mr. Bimal Kumar Ghosh, Mr. R. K. Khadilkar, Mr. Kasni Singh, Mr. T. C. N. Menson and Srimati Prabhat Kar.

DISSENTING NOTES

(1) Mr. M. R. Masani.

This tax may not bring in substantial revenue commensurate with the any psychological disturbance,dislocation and harrasment it is bound to cause.

Originally the Bill contended to tax only those persons whose income was Rs. 60,000 or more per year. The amended Clause (3) of the Bill has changed the position.

Dr. Kaldor's simple formula has not been followed. The assessee must submit a detailed list of all the expenses incurred in the year. He shall also prove that his expenditure does not exceed Rs. 36,000.

Dr. Kaldor has admitted that the Expenditure-tax will be "Administratively more difficult to handle than the present Income tax". Large evasions in income-tax prove that collecting machinery is deffective.

Dr. Kaldor's contemplation was that expenditure-tax will replace Super-tax. Though the revenue yield from Expenditure Tax is expected not

to be substantial, it is persumed that it will penalise and restrict extravagant expenditure and conspicious waste. Restrictions imposed on spending will mean enforced saving and hence limiting the power of purchasing. Denial of freedom of spending will mean a blow at the incentive to increase efficiency, productively and harder work.

2. Mr. A. Krishnaswami.

Expenditure-tax is a source of additional revenue or personal taxation instead of Income-tax, also an anti-inflationary measure ; detterent to excessive personal expenditure, prevents expenditures of specific kind and above specific limits.

Clauses 13 to 17 reveal that a lot of harrasment may result to the assessee. *Lord Keynes* and *Prof. Pigou* have rejected it because of its practical difficulties. *Dr. Kaldor's* formula has been let out and an attempt has been made to devise on an evasion-prof-procedure.

Advocated by Finance Minister artificial defination of dependants (as in Western society) has been accepted by the Committee.

Medical expenditures are unforeseen and irregular. It is henious to collect tax from the estate of deceased person.

3. Mr. Bimal Kumar Ghosh
and
Mr. R. K. Khadilkar.

It will be a harrasment to a person of moderate or meagre means. Limit of Rs. 36,000 be reduced to Rs. 24,000.

Basic allowance for an individual under section 6 (h) (i) should be Rs. 24,000 for an individual with a further addititional allowance of Rt. 3,000 for every additional dependant, total not to exceed Rs. 30,000.

4. Mr. Karni Singh.

The Expenditure-tax Bill should not be added to the Statute Book of India.

The objects of the Bill have been more less nullified due to exemptions and allowances given there in. The Government should try to earn goodwill of the citizens rather than create apathy in their minds towards the Government. Harassments under this scheme of taxation are feard most.

The Bill Now necessitiates the keeping of even paltry accounts properly.

Prof. Kalder does not propose any limit of Rs. 36,000. He recommended exemptions on birth and funeral expenditure.

Persons whese net taxable income does not exceed Rs. 36,000 are permitted to make any amount of expenditure from their capital or otherwise, but whose income is above Rs. 36,000 will have to pay tax even if they spend it from their capital, why this dicrimination.

A married couple with children and an unmarried man, both have been allowed a basic allowance of Rs. 30,000. This is a glaring misconception of the Bill.

The paltry allowance of Rs. 5,000 allowed for medical aid is quite inadequate. People falling ill after the passing of the Act will not be allowed special exemption limit of Rs. 20,000.

No suitable provision for education in India has been made and a sum of Rs. 8000 for education abroad is quite insufficient.

India is a country with great traditions and deep sentiments and so a sum of Rs. 5,000 for wedding is arbitrary and inequitous,

The rate of the Expenditure-tax is staggering. Highest slab should not exeeed 50 per cent.

Expenditure-tax should come into foree in 1957.

Expenditure-tax cases should be limited to three and two years falling under clause 16 (*a*) and 16 (*b*).

Purchase of household utensils should be exempt.

With a view to promoting Civil Aviation, exemption for aeroplanes be given.

5. Mr. T. C. N. Menon,

and

Srimati Parbhat Kar.

Original provisions of the Bill were defective and inadequate; changes in Select Committee have made the position worse. The committee, has actually frustrated the Bill's objective.

Clause (**1**). We opposed tagging down the liability to pay expenditure tax to either the net or gross annual income of an assessee. It should be based on actual expenditure and the basis of taxation should be on annual expenditure of Rs. 12,000.

Clause 4 (**1**). Limit of Rs. 5,000 subject to tax, should go.

Clause (**5**). The long list of exemption will in effect negative the very purpose of the Bill. We find "exemption" accepted as the normal rule, and the rule made the exemption.

Specifically took exception to the total exemption under 5 (*a*), 5 (*b*), 5 (*e*), 5(*g*), and 5 (*n*). We recommend the total deletion of Clause 5 (*q*) (*i*), (*ii*), (*iii*), and (*v*).

Clause 6. Exemption of Rs. 2,000 is equitable.

Basic allowance under Clause 6 (*h*) is extravagant; for an individual it should be Rs- 12,000 and for H. U. F. Rs. 24,000.

Clause 6 (**a**). Recommended the deletion of the whole of the clause-(6) (2).

APPENDICES

APPENDIX A

EXTRACTS FROM THE CIVIL PROCEDURE CODE.

ORDER V.

ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

1. Summons.—(1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiffs' claim,

* * * * * *

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

* * * * * *

3. Court may order defendant or plaintiff to appear in person.—(1) Where the Court sees reason to require the personal appearance of the defendant the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party to be ordered to appear in person unless resident within certain limits.—No party shall be ordered to appear in person unless he resides—

(*a*) within the limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

* * * * * *

6. Fixing day for appearance of defendant.—The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons ; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

* * * * * *

Service of Summons.

9. Delivery or transmission of summons for service.—(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

10. Mode of service.—Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

12. Service to be on defendant in person when practicable, or on his agent.—Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13. Service on agent by whom defendant carries on business.—(1)In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

15. Where service may be on male member of defendant's family.—Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanations.—A servant is not a member of the family within the meaning of this rule.

16. Person served to sign acknowledgment.—Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

17. Procedure when defendant refuses to accept service, or cannot be found.—Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable deligence, cannot find the defendant, and there is no agent empowered to accept service of

the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix, a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and, shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. Endorsement of time and manner of service.—The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Examination of serving officer.—Where a summons is returned under rule 17, the Court shall if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court touching his proceedings, and may make such further inquiry in the matter as it thinks fit ; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20. Substituted service.—(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Effect of substituted service.—(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Where service substituted, time for appearance to be fixed.—(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

[**20-A. Service of Summons by post.**—(1) Where, for any reason whatsoever, the summons is returned unserved the Court may, either in lieu of, or in addition to, the manner provided for service of summons in the foregoing rules, direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept service at the place where the defendant or his agent ordinarily resides or carries on business or personally works for gain.

(2) An acknowledgment purporting to be signed by the defendant or the agent or an endorsement by a postal employee that the defendant or the agent refused to take delivery may be deemed by the Court issuing the summons to be *prima facie* proof of service.]

21. Service of summons where defendant resides within jurisdiction of another court.—A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. Service, within presidency towns, of summons issued by Courts outside.—Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras and Bombay is to be served within any such limits it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

23. Duty of Court to which summons is sent.—The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Service on defendant in prison.—Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

25. Service where defendant resides out of India and has no agent.—Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Provided that where any such defendant resides in Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides :

Provided further that where any such defendant is a public officer in Pakistan (not belonging to the Pakistan military, naval or air forces) or is a servant of Railway company or local authority in that country the summons, together with a copy thereof, may be sent for service, on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official *Gazette*, specify in this behalf.

26. Service in foreign territory through political agent or Court.—Where—

(*a*) in the exercise of any foreign jurisdiction vested in the Central Government a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(*b*) the State Government has, by notification in the Official *Gazette* declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court

of any summons issued under this Code by a Court of the State shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

* * * * * *

ORDER XVI

Summoning and Attendance of Witnesses

1. Summons to attend to give evidence or produce documents.—At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

[**1-A. Production of witnesses without summons through Court.**—Where any party to the suit has, at any time on or before the day fixed for the hearing of evidence, filed in the Court a list of persons either for giving evidence or for producing documents, the party may, without applying for summons under rule 1, bring any such person, whose name appears in the list, to give evidence or to produce documents.]

* * * * * *

5. Time, place and purpose of attendance to be specified in summons.—Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

6. Summons to produce documents.—Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

7. Power to require persons present in Court to give evidence or produce document.—Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

8. Summons how served.—Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

9. Time for serving summons.—Service shall in all cases be made a sufficient time before the time specified in the summons for the

attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

10. Procedure where witness fails to comply with summons.—(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has without lawful excuse, failed to attend or to produce the document in compliance with such summuns or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein ; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its direction, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit not exceeding the amount or the costs of attachment and of any fine which may be imposed under rule 12 :

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

11. If witness appears, attachment may be withdrawn.—Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

(*a*) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid sorvice, and

(*b*) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. Procedure if witness fails to appear.—The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment together with the amount of the said fine, if any :

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment,

13. Mode of attachment.—The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this order as if the person whose property is so attached were a judgment-debtor.

14. Court may of its own accord summon as witnesses strangers to suit.—Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

15. Duty of persons summoned to give evidence or produce documents.—Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and, whoever is summoned to produce a document shall either attend to produce it or cause it to be produced, at such time and place.

16. When they may depart.—(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any,) the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. Application of rules 10 to 13.—The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. Procedure where witness apprehended cannot give evidence or produce document.—Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No witness to be ordered to attend in person unless resident within certain limits.—No one shall be ordered to attend in person to give evidence unless he resides—

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

ORDER XXVI

COMMISSIONS

Commissions to examine witnesses

1. Cases in which Court may issue commission to examine witness.—Any Court may in any suit issue r commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

2. Order for commission.—An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

3. Where witness resides within Court's jurisdiction.—A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

4. Persons for whose examination commission may issue.—(1) Court may in any suit issue a commission for the examination of—

(*a*) any person resident beyond the local limits of its jurisdiction ;

(*b*) any person who is about to leave such limits before the date on which he is required to be examined in Court ; and

(*c*) any person in the service of the Government who cannot, in the opinion of the Court attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

5. Commission or request to examine witness not within India.—Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Court to examine witness pursuant to commission.—Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Return of commission with depositions of witnesses.—Where a commission has been duly executed, it shall be returned, together, with the evidence taken under it, to the Court from which it was issued unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order ; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of he record of the suit.

Commissions for local investigations.

9. Commission to make local investigation.—In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court :

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. Procedure of Commissioner.—(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

Report and deposition to be evidence in suit.—(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record ;

Commissioner may be examined in person.—but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching in any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the inves igation.

(3) Where the Court is for any reason dissatisfid with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

APPENDIX—B

WRITS, RES-JUDICATA, ESTOPPEL AND EQUITY

WRITS

Often it so happens that the aggrieved has no remedy to redress his grevience under a particular Act and he wants to get justice from higher court. People go in for writs under such circumstances.

High Courts and the Supreme Court in exercise of their original jurisdiction have powers *to issue orders or writs in certain cases.* High Court can issue orders, directions or writs under Article 226 of the Constitution of India, to any person authority or any Government under its jurisdiction for the enforcement of fundamental rights and for any other purpose also, while the Supreme Court can do so under Article 32. of the Constitution for the enforcement of fundamental rights only. This power of the Supreme Court is in addition to the power it has under Article 136 to grant special leave to appeal from any judgment, decree, determination, sentence, or order in any cause or matter passed or made by any cours or tribunal. The High Court in addition to its powers under Article 226, has supervisory powers under Article 227 over all courts and Tribunals through out the territories in relation to which it exercises jurisdiction. Under Article 32 the aggrieved instead of moving the High Court can directly move the Supreme Court. But in cases where the question of fundamental rights is not involved, the correct thing is to move the High Court in the matter.

Supreme Court in the case of[1] (against order of Central Board of Revenue) said that the levy of tax may be in violation of the fundamental rights to equality granted under Article 14. In the case of[2] ; the Supreme Court said that a levy of Sales Tax operates as an unreasonable restriction on the fundamental rights to carry on a business or any occupation, under Article 19 (1) (*g*).

The Supreme Court and the High Courts have powers to issue directions, or orders or writs including writs in the nature of *habeas corpus, mandamus, prohibition, quo-warranto,* and *certiorari.*

The details of the writs are being given below :—

1. Habeas Corpus.—It is pronounced as "He-bi-as Kerpus," In cases where a man is unlawfully or unjustifiably detained in a prison or in a in private custody, recourse can to taken to this writ to get him released immediately. The man is ordered to be produced before a court or the Judge for inquiry and necessary orders. It is known as a writ of liberty and was first established in England in 1679 by Statute 31 Car II C. 2. In United States the privilege of this writ is suspended only in case of rebillion or invasion. In the case of[3], this writ was tried but the permission of release was not given.

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1. Surajmal Mohetta vs. A. V. Vishvanath Shastri 26 I. T. R. and Bidi Supply Co. vs. Union of India 29 I. T. R. 717.
2. H H. Mehta vs State of Madhya Pradesh.
3. Purshottam Govindji Halai vs. Additional Collector of Bombay and others 23 I T.. R. 891.

Mandamus.—This is for the purposes of supplying defects of justice and it gives a command to the inferior court, corporation, or person to give justice to the aggrieved. It actually commands them to do a certain thing appertaining to his or their office of duty. This writ is issued when the following conditions are fulfilled :—

(*i*) It is issued in cases where the alternative remedy is not so convinient, beneficial, and effective.

(*ii*) That the party, against whom the writ is required to be issued has not performed a duty which he was so legally bound to perform against the applicant.

(*iii*) The performance of such duties should be of a public nature.

(*iv*) It must be a case where a demand for the enforcement of such duties was made, but was refused.

(*v*) It must be a case where the *effective remedy* is only by a writ.

3. **Quo Warranto.**—It is a writ that lies against a man, who has usupred or claimed an office franchise, to know on what grounds he supports his right to that office or franchise. This can be issued if the following things exist :—

(*i*) That such an office is held under the State.

(*ii*) That it is substantive in character.

(*iii*) That the duties of office are of a public character.

4. **Certiorari.**—It is pronounced "Sur-shi-o-re-rai". In this writ the High Court on the motion of the party aggrieved directs the inferior court to send all the certified records of that case to it, so that the applicant may be sure of justice. In cases where the aggrieved feels that the justice may be delayed or may not be given to him in a case pending in the court, he moves the High Court. It is often used for quashing the orders of a judicial body. It can be issued only when conditions as mentioned in a writ of *mundamus*, exist.

5. **Prohibition.**—This is not issued against a body which is not court. It is issued where a court inferior to High Court performs a duty (*i*) in contravention of the laws of the land, or (*ii*) in excess of its jurisdiction. By this it cannot correct the course, or procedure and practice of a inferior court and neither it can correct the wrong decision on the merits of proceedings. It can only prohibit the court from taking any proceedings if such a court is working in excess of its jurisdiction or in contravention of the law of the land.

Any of such writs can be issued either before the officer has taken any action or even after he has taken the action. Ordinarily such writs can be available against Wealth-Tax Officers only, but in special cases the writs can be issued against the orders of the Appellate Tribunals also.

Estoppel and Res-judicata.—The doctrine of *estoppel and res judicata* are very important in the field of law but do not generally apply to taxation cases unless there are some special circumstances, because the Wealth Tax Officers, Expenditure Tax-Officers, Income Tax and the Sales Tax Officers are not courts. Before one tries to know where it applies and where it does not, he should know what is *'estoppel'* and what is *res-judicata.*

Estoppel.—It is Section 115 of the Indian Evidence Act 1872 under Chapter VIII. The Section reads—"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing."

Illustration.

"A" intentionally and falsely leads 'B' to believe that certain land belongs to 'A' and thereby induced 'B' to buy and pay for it.

The land afterwards becomes the property of 'A', and 'A' seeks to set aside the sale on the ground, that at the time of the sale he had no title. He must not be allowed to prove his want of title." It has become a rule of law. Estopple arises only if it fulfils the following conditions. There must be—

(1). A representation of an existing fact as distinct from a mere promise, *de futuro* made by one party to another.

(2) That another party, believing it, must have been induced to act on the faith of it.

(3) That he must have so acted to his detriment[1].

Similarly let us see what is *Res judicata.* It is Section 11 of the Code of Civil Procedure 1908 (Act V of 1909) and reads as below—

RES JUDICATA

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For this purposes of the section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such court.

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1. 1952 S. C. 145=1952 A. L. J. 324, See also 1952 R. D. 81=1952 A. W. R. 89.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, to have been refused.

Explanation VI.—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in commons or themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating,". The principle of *Res-judicata* is that a person should not be troubled twice for the same cause and that the litigation should be finally decided. Before the Code of Civil Procedure came in, this doctrine was recognised even in Hindu Jurisprudence. For this the case of[1] is very important.

Having understood what estoppel and *res-judicata* is, it is to be seen how it actually applies to the cases of taxation. Taxing authority is fully authorised to determine one thing for one assessment year and then a quite different thing for another assessment year[2]. In the words of *Hanworth*, "The assessment is final and conclusive between the parties only in relation to the assessment for the particular year for which it is made. No doubt a decision reached in one year would be a cognet factor in the determination of a similar point in a following year, but I cannot think that it is to be treated as an estoppel binding upon the same party for all years".

If in any previous year the taxing authority has arrived at a finding for particular things in the assessment proceedings those findings cannot be binding for the subsequent year either for the assessee or the department. Say in a case the status of an assessee was determined to be that of a Hindu Undivided Family and not that of an individual[3], or that a partition had taken place in a Hindu Undivided Family[4], can in no way be a binding on the assessee either against him or in his favour in subsequent years of assessment.

If in a certain case the assessee has included certain items of income, wealth or expenditure as taxable in the returns, while they

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1. Kalipada vs. Dujlapada (1930) P. C. 22.

2. Sankaralinga Naidu Bros. vs. C. I. T. 44 I. T. C. 226, 241 (F. B.) Laxminarayan vs. C. I. T. 3 I. T. C. 269; Sardar Bahadur Inder Singh vs. C. I. T. (1943) I. T. R. 16, 30/1; Sahu Har Prasad Raja vs. C. I. T. 10 I. T. R. 83. 91/2; Brooke vs. I. R. 7 T. C. 236 (H. L.); Lala Jindahram vs. C. I. T. 3, I. T. C. 345.

3. Baijnath vs. C. I. T. (1954) 26, I. T. R. 324; Sardar Bahadur Inder Singh vs. C. I. T. (1943) I. T. R. 16; Jaitumal Chamanlal vs. C. I. T. (1944) I. T. R. 296.

4. Mathradas and Sons vs. C. I. T. (1933) I. T. R. 212.

must not have been shown as such, he is not bound to knowingly commit that mistake again, or file the returns in the similar way in the subsequent years. Such a thing will be wrong[1].

It is only when fresh facts come to light that taxing authority can reopen a case and such facts should lead to conclusion which are different from those reached in the previous year[2]. If such conditions are not fulfilled the doctrine of *res judicata* or estoppel by record cannot compell the taxing authority to reopen a case.

Where the assessee has made some admissions in the previous year during the course of proceedings of assessment such pieces of admissions are used as evidences against him for the assessment of subsequent years and the assessee cannot go against what he has said, then[3].

The Full Bench decision of Madras High Court in the case of[4] throws further light on the principle of applicability of *res judicata.*

"When the question relating to assessment does not vary with the income every year but depends on the nature of the property or any other question on which the rights of the parties to be taxed are based, *e. g.*, whethere a certain property is a trust property or not, it has nothing to do with the fluctuations in the income; *such questions if decided by a Court on a reference* made to it would be *res judicata* in that the same question cannot be subsequently agitated[5]. But if a question is decided by a court on a reference, which depends on consideration which may vary from year to year, *e.g.*, the case in whieh the average valuation had to be taken, there could be no question[6] of *res judicata.*

While deciding a case; *Chakervarti C. J.* said—"Estoppel is not a basis of liability to assessment under the Indian Income Tax Act and therefore the assessment of a person for an amount of income to which he is a stranger cannot be based on the ground that he himself wanted to be assessed on it."

A compromise assessment between the assessee and the taxing authority against the provisions of the Act is void and cannot be a binding on either the assessee or the officer, *i.e.*, cannot work as an estoppel against the assessee or the officer from taking the correct view of the provisions and following them in other years of the assessment[7].

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1. Rex. vs. B. C. Fire and Cedar Lumber Co. 1932 A. C. 441, 445 (P. C.); Dakeshwar Prasad vs. C. I. T. 1936 I. T. R. 71, 76, 79.

2. Shankaralinga Nadar vs. C. I. T. 4 I. T. R, 226, 243 (Mad.) (F. B.); Kaniram Ganpatrai vs. C. I. T. 1941 I. T. R. 332, 337/8 (Pat.); Deokinandan and Sons vs. C. I. T. 3 I. T. C. 398; Tejmal Bhojraj vs. C. I. T. (1952) 22 I. T. R. 208.

3. Sirdar Bahadur Inder Singh vs. C. I. T. 1943 I. T. R. 16, 31.

4. Sankaralinga Nadar Bros vs. C. I. T. 4, I. T. C. 226, 2423.

5. Hoystead vs. Comission of Taxation 1926 A. C. 155.

6. Broken Hill Proprietary Co. vs. Broken Hill Municipal Council 1926 A. C. 94; *In re.* Ramjidas Jain and Co. 1945 I. T. R. 430, 436; Kamlapat Motilal vs. C. I. T. 1950 I. T. R. 812.

7. Allahabad Milling Co. vs. C. I. T. 6 I. T. C. 286; Gresham Life Assec. Society vs. Att. Gen. 7 T. C. 36; I. R. vs. Peter Mc. Inlyre Ltd. 12 T. C. 1006; Anderson and Headsteed Ltd. vs. Birrel 16 T. C. 200, 207; British South Africa Co. vs, C. I. T. 1946 I. T. R. Suppl. 17, 30 (P. C.) Brodie's Trustees vs. I. R. 17 T. C. 432, 441; Williams vs. Grund vs, Trustees 18 T. C. 271, 279.

Equity.—We talk of "equity" every now and then while demanding justice from the Taxing Authorities and specially in cases of 'best judgment assessments' and in 'no account cases'. It is, therefore, necessary that we exactly know what 'quity' means. Best difination of 'equity' is given by *Aristotle*. He says "It is 'Equity' to pardon human feelings, and to look to the law giver and not the law ; to the spirit and not to the letter ; to the intention and not to the action ; to the whole and not to the part ; to the character of the actor in the long run and not to the present moment to remember good rather than evil ; and the good that one has received rather than the good that one has done, to bear being injured, to wish to settle a matter by words rather than by deeds ; lastly to prefer arbitration to judgments for the arbitrator sees what is equitable, but judges only the law and for this an arbitrator was first appointed in order that equity might flourish,"

Blockstone says "Soul and spirit of all law ; positive law is construed and natural law is made by it. In this Equity is synonymous with justice in that, it is the true and sound interpretation of the rule".

The Old Hindu and Mohammadan Law also followed the principles of Equity. Sri Jaiswal says :—

"We may recall *'Klutiy's'* provision that if the Dharma text is found opposed to judicial reason, the Dharma text fails and there the authority of reason prevails..... *Yajna Valkya* says—Where there is a conflict between reason and text ; he limits the superiority of Reason and Equity to a conflict between the Shastras themselves". In Mohammadan Law 'Equity' is known as 'Istihsan ' or 'Juristic Equity'.

'Equity' is the last course of law and where there is no specific law it begins to work to get natural justice, in honesty and in right. The word 'Equity' is taken from the Roman word 'Acquitas'. This actually means levelling or making equal. It is used in four main senses :—

(1) Literal, (2) General, (3) Roman, (4) English.

(1) In literal sense it is 'right founded on the laws of nature'. It is really fiarness and justice.

(2) In General senre, it is natural justice, honesty and right.

(3) In Roman sense it means that collection of moral principles which Praetor introduced parallel to 'Juscivile'.

(4) In English Law it is that which supplemented the rules and procedure of the common law, and was administered by the Courts of Chancery,

Recognition of the principles of 'Equlty' are found embodied in the Specific Relief Act, Indian Trust Act, Indian Succession Act etc. Sections 49 and 51 of the Transfer of Property Act are based on 'Equity' and so the Sections 64 and 65 of the Indian Contract Act.

Writs as described before were recognised long ago in the eyes of Common law of England. The whole of the Common law was moving about the writs and it was said—"Where there is no writ there is no remedy". In 'Equity' no one demanded justice against a wrong-doer if such a man was himself doing a wrong. In 'Equity' nothing could be done that will injure the conscience.

APPENDIX—C

STAMP DUTIES AND COURT FEES

As the act is to be administered by the Income Tax department, the Central Board of Revenue circular about court fees is of importance and is being given for guidance and help.

F. No. 91/56|56-IT

Dated the 28th December, 1956

Circular No. 50 (XL-43) D of 1956

Subject : Court fees Act, 1870—Documents etc. filed before the Income Tax authorities—Amount of court fees payable-schedule of.

A question has been raised as to what are the correct amounts of court fees payable on applications and other documents presented before the various Income Tax authorities. The Board have been advised that the court fee on documents presented before the Income tax authorities are chargeable according to the scale laid down in the Court Fee Act 1870, and the amendments made in the different States are not to be taken into consideration. The amounts of court fees payable at present on various documents filed before the various Income Tax Authorities in all the charges of the Commissioner of Income Tax are shown in the schedule annexed hereto.

SCHEDULE

Showing the amounts of Court-fee paybale on various documents presented before the Income-tax authorities.

S. No.	*Nature of the document*	*Income-tax Authority*	*Provision of Court-fees Act, 1870*	*Amount of Court-fee payable*
				Rs.
1	*Vakalatnama*	Income-tax Officer, Inspecting Assistant Commissioner of I. T., Appellate Assistant Commissioner of I. T.	Art. 10(*a*) of Sch. II	-/8/-
		Commissioner of Income-tax.	Art. 10(*b*) of Sch. II	1/-/-
		Central Board of Revenue.	Art. 10(*c*) of Sch. II	2/-/-

S. No.	Nature of the document	Income-tax Authority	Provision of Court-fees Act, 1870	Amount of Court-fee payable
2	Application for obtaining copy of any order passed by I. T. authorities or any other document on the record of I. T. Authorities		Art. 1(*a*) of Sch. II	-/1/-
3	Application other than an application for copy of any order (passed by I. T. Authorities) or of any other document on the record of the I. T. Authorities when presented to the Commissioner of Income Tax or the Central Board of Revenue.	Commissioner of Income-tax / Central Board of Revenue	Art. 1(*c*) of Sch. II	1/-/-
	Certified copy of any order of the I. T. Authorities (not for private use nor intended for filing before the I. T. A. T.	...	Art. 6 of Sch. I	-/8/-
	Certified copy of any other document on the record of the I. T. Department (not for private use).	...	Art. 9 of Sch. I	-/8/- for every 360 words or fraction thereof.
	Memorandum of Appeal	Appellate Assistant Commissioner of Income-tax	Art. 11(*a*) of Sch. II	-/8/-
		Central Board of Revenue	Art. 11(*a*) of Sch. II	2/-/-

Affidavits—Whenever an affidavit is required to be filed during Income tax proceedings, Wealth-tax Proceedings of Expenditure tax proceeding, before the officers, Assistant Commissioners or Commissioner, it is not exempt from stamp duty because none of these officers in a court except to the extent of section 37 of the Income Tax Wealth-tax Act and also section of the Expenditure Tax Act. Exemption (*b*) to article 4, schedule I, Indian Stamp Act, 1899, does not apply to it.

Power of Attorney—Authorisation in favour of a legal practitioner is *Vakalatnama* and its court fee is shown in the schedule. Where it is in favour of another person it is 'power of attorney and the stamp duty is charged according to article 48(*c*) of schedule I of the Indian Stamp Act 1899. In this adhesive stamps can not be used. It is a paper embossed with proper stamps that is to be used for writing power of attorney.'

Liability of instruments presented to the Appellate Tribunal to stamp duty and court fees.

'Vakalatnama'—Or '*Mukhtarnama*' is chargeable with court fees under Article 10(*a*) of schedule II to Court Fees Act.

'Power of Attorney'—It is to be stamped in accordance with article 48(*c*), schedule I to Indian Stamp Act.

'Memorandum of Appeal' presented to Appellate Tribunal and copies of orders passed by Income tax authorities where such copies are to be presented to Appellate Tribunal are exempt from court fees by Notification of Government of India, Home Department No. 123—41—Public (J), dated 29th January, 1942.

Registrar Income Tax Tribunal Bombay, has issued the following memorandum dated the 24th June, 1954 in respect of court fees to be charged on documents filed before the Tribunal.

The question whether court fees should be charged on documents filed before the Tribunal in accordance with the provisions of the central (Government of India) court fees Act without taking into consideration, the amendments made by the different States, has been reviewed. It has been decided that court feet should be charged on documents filed before the Tribunal according to the scales laid down in the Central (Government of India) Court Fees Act and the amendments in the scales made in different states should not be taken into consideration for this purpose. The amount of court fees payable at present on various docnments filed before the Tribunal and on certified copies supplied by the Tribunal will therefore be as shown below :—

Sl. no.	Nature of document	Provision of the C. F. Act	Amount of court fees payable
	Vakalatnama	Article 10(*a*) schedule II	Eight annas.
	Application for obtaining copy of any order of the Tribunal or of any other document on the record of the Tribunal.	Last clause of article 1(*a*), schedule II	One anna.
	Certified copy of any order of the Tribunal which is not for private use.	Article 6, schedule I (the value of the subject matter always exceeds fifty rupees)	Eight annas.
	Certified copy of any other document on the record of the Tribunal (which is not for private use).	Article 9, schedule I	Eight annas for every three hundred and sity words or fraction of three hundred and sixty words.

The scales of court fees mentioned above will be enforced with immediate effect.

Registrar.

APPENDIX—D

THE CENTRAL BOARD OF REVENUE ACT

(ACT No. IV OF 1924)

An Act to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board.

Whereas it is expedient to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board ; it is hereby enacted as follows : —

1. **Short title and commencement**—(1) This Act may be called the Central Board of Revenue Act 1924.

(2) It shall come into force on the first day of April, 1924.

2. **Constitution of Central Board of Revenue**—As soon as may be after the commencement of this Act the Central Government shall constitute a Central Board of Revenue consisting of one or more persons appointed by it, which shall be subject to the control of the Central Government in the exercise of such powers and the performance of such duties as may be entrusted to it by the Central Government or by or under any law.

3. **Procedure of Board**—The Central Government may make rules for the purpose of regulating the transaction of business by the Central Board of Revenue and every order made or act done in accordance with such rules shall be deemed to be the order or act, as the case may be, of the Central Board of Revenue.

4. **Amendments of enactments**—Repealed by section 3 and shedule II of the Repealing and amending Act 1939 (34 of 1939).

THE SCHEDULE

*Enactments Amended

Repealed by section 3 and schedule II of the Repealing and Amending Act 1939 (34 of 1939).

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* The schedule amended the following.—Sea Costoms Act, 1878 (8 of 1878), the Cotton Duties Act 1896 (2 of 1896), Indian Salt Duties Act 1908 (10 of 1908), the Indian Copy-right Act 1914 (3 of 1914), and the Indian Income-Tax Act 1922 (11 of 1922). Repealing Act 1927 (12 of 192) repealed the entry relating to Act of 1896.

APPENDIX—E

APPELLATE TRIBUNAL RULES, 1946

(Income-tax Appellate Tribunal Notification, date thc 31st October, 1946).

In pursuance of sub-section (8) of section 5A of the Indian Income-tax, Act, 1922 (XI of 1922) and in supersession of the existing rules made thereunder, the Appellate Tribunal is pleased to make the following rules, namely :—

(1) these ruler may be called Appellate Tribunal Rules, 1946.

(2) They shall come in to force on the 25th November, 1946.

2. In these rules, unless there is anything repugnant in the subject or context :—

(*i*) "Act" means the Indian Income-tax Act, 1922 (XI of 1922)

(*ii*) "authorised representative" means :—

(*a*) in relation to an assessee, a person duly authorised by the assessee under section 61 to attend before the Tribunal ; and

(*b*) in relation to an Income-tax authority who is a party to any proceeding before the Tribunal, a person duly appointed by the Central Government by notification in the official *Gazette* as authorised representative to appear, plead and Act for such authority in any such proceeding, and any other person acting on behalf of the person so appointed ;

(*iii*) "Bench" means a Bench of the Tribunal Constituted under sub-section (5) of section 5A ;

(*iv*) "member" means a member of the Tribunal ;

(*v*) "prescribed form" means a form prescribed in the rules made by the Central Board of Revenue under section 59 ;

(*vi*) "President" means the President of the Tribunal ;

(*vii*) "Registrar" means the person who is for the time being discharging the functions of the Registrar of the Tribunal ;

(*viii*) "Section" means a section of the Act ;

(*ix*) "Tribunal" means the Appellate Tribunal constituted by the Central Government under section 5-A, and includes, where the context so requires, a Bench exercising and discharging the powers and functions of the Tribunal.

(3) A Bench shall hold its sittings at its head-quarters or such other place as it may consider convinient.

(4) (1) A Bench shall hear and determine such appeals and applications made under the Act as the President may by general or special order direct.

(2) Where at a headquarters other than Bombay there are two Benches of the Tribunal, the seniormost member may transfer an appeal or an application from one of such Benches to the other.

(5) [* *] Deleted.

(6) The language of the Tribunal shall be English.

(7) (1) A memorandum of appeal to the Tribunal shall be presented by the Appellant in person or by an agent to the Registrar at the headquarters of the Tribunal at Bombay, or to an officer authorised in this behalf by the Registrar, or sent by registered post addressed to the Registrar or to such officer.

(2) A memorandom of appeal sent by post under sub-rule (1) shall be deemed to have been presented to the Registrar or to the officer authorised by the Registrar, on the day on which it is received in the office of the Tribunal at Bombay or, as the case may be, in the office of such officer.

(8). The Registrar or, as the case may be, the autborised officer shall endorse on every memorandum of appeal the date on which it is presented or deemed to have been presented under rule 7 and shall sign the endorsement.

(9) Every memorandum of appeal shall be written in English, and shall setforth, concisely and under distinct heads, the grounds of appeal without any argument or narrative ; and such grounds shall be numbered consecutively.

(10) (1) Every memorandom of appeal shall be in triplicate and shall be accompanied by two copies (at least one of which shall be a certified copy) of the order appealed against and two copies of the order of the Income-tax Officer.

(2) The Tribunal may at its discretion accept a memorandum of appeal which is not accompanied by all or any of the documents referred to in sub-rule (1).

(11) Where the fact that cannot be borne out by, or is contrary to the record is alleged, it shall be stated clearly and concisely and supported by a duly sworn affidavit.

(12) The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule.

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.

(13) The Tribunal may reject a memorandum of appeal, if it is not in the prescribed form or return it for being amended within such time as it may allow. On re-presentation after such amendment the memorandum shall be tigned and dated by an officer authorised in this behalf by the Tribunal.

(14) In an appeal by an assessee under sub-section (1) or section 33 or sub-section 33B, the Income-tax Officer concerned shall be made a respondent to the appeal.

(15) In an appeal by an Income-tax Officer under sub-section (2) of section 33, the appellant before the Appellate Assistant Commissioner shall be made a respondent to the appeal.

(16) In an appeal under sub-section (2) of section 33, a certified copy of the order of the Commissioner directing that an appeal be preferred, shall be appended to the memorandum of appeal.

(17) Where a memorandum of appeal is signed by an authorised representative, the assessee shall append to the memorandum a document authorising the representative to appear for him and if the representative is a relative of the assessee, the document shall state what his relationship is with the assessee or if he is a person regularly employed by the assessee the document shall state the capacity in which he is at the employed.

Provided that such a document need not be appended in the case of an appeal under sub-section (2) of section 33 of the Act.

(18) An authorised representative appearing for an assessee at the hearing of an appeal, shall unless the document referreed to in rule 17 has been appended, file such a document before the commencement of the hearing.

(19) The Tribunal may, on an application made by an appeallant, direct the preparation of a paper book at the cost of the appeallant. If such a direction is given, the parties to the appeal shall be required by the Registrar to state what papers or documents they desire to be included in the paper book. On receipt of the statements of the parties, the Registrar shall take such action as may be necessary for the preparation of the paper book.

(20) (1) The Tribunal shall notify to the parties the date and place of hearing of the appeal and send a copyof the memorandum o f appeal respondent either before or with such notice.

(2) The issue of notice referred to in sub-rule (1) shall not by itself be deemed to mean that the appeai has been admitted.

(21) The date and place of hearing of the appeal shall be fixed with reference to the current business of the Tribunal and the time necessary for the service of the notice of the appeal, so as to allow the parties sufficient time to appear and be heard in support of or against the appeal.

(22) In an appeal under sub-section (1) of section 33, in fixing the date for the respondent to appear and answer to the appeal, a reasonable time shall be allowed for the necessary communication with the Commissioner through the proper channel and for the issue of instructions to an authorised representative to appear and on behalf of the respondent.

(23) On the day fixed, or any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Tribunal shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appeallant shall be entitled to reply.

(24) Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appeallant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or may hear it *ex parte*.

(25) Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellnt appears and the recpondent does not appears when the appeal is called on for hearing, the Tribunal may hear the appeal *ex parte*.

Explanation.—In rule 24 and 25 "appear" means appear in person or through an authorised representative.

(26) Where an assessee whether he be the appelant or the respondent to an appeal dies or is adjudicated insolvent or in the case of a company being wound up, the appeal shall not abate and may, if the assessee was the appellant, be continued by, and if he was respondent be continued against, the executer, administrator or other legal representative or the assessee or by or against the receiver or liquidator as the case may be.

(27) The respondent, though he may not have appealed, may support the order of the Appellate Assistant Commissioner on any of the grounds decided against him.

(28) Where the Tribunal is of opinion that the case should be remanded, it may remand it to the Appellate Assistant Commissioner or the Income-tax Officer, wiih such directions as the Tribunal may think fit.

(29) The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or any other substantial cause, or if the Income-tax Officer has decided the case without giving a sufficient opportunity to the assessee to adduce evidence either on points specified bp him or not specified by him, the Tribunal may allow such documents to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

(30) Such document may be produced or such witnes examined or such evidence adducrd either before the Tribunal or before the Appelate Assistant Commissioner or before the Income-tax Officer, as the Tribunal may direct.

(31) If the document is directed to be produced or witness examined or evidence adduced before the Appellate Assistant Commissioner or the Income-tax Officer, he shall comply with the direction of the Tribunal and after compliance send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Tribunal.

(32) The Tribunal may, on such terms as it thniks fit, and at any stage adjourn the hearing of the appeal.

(32-A). The proceedings before the Tribunal shall not be open to the public. No person except the assessee, his employee, his authorised representative including counsel engaged by him or by the authorised representative shall, without the permission of the Tribunal, remain present when an assessee's case is being heard by the Tribunal:

Provided that the provisions of this rule shall not apply to the officers of the Income-tax Department counsel engaged by it.

(33) (1) The order of the Bench shall be in writing and shall be signed and dated by the members constituting it.

(2) When a case is referred under sub-section (7) of section 5-A, the order of the member or members to whom it is referred shall be signed and dated by him or them as the case may be.

(34) The Tribunal shall, after the order is signed, cause it to be communicated to the assessee and to the Commissioner.

(35) An application for reference under sub-section (1) of section 66 shall be in triplicate and shall be accompanied by a list of documents (particulars of which shall be stated) which in the opinion of the applicant should form part of the case and a translation in English of any document, where necessary.

(36) Rules 7, 8, 13, 20, 23, 26 and 33 shall apply, *mutatis mutandis*, to an application under sub-section (1) of section 66.

(37) Where the application is by an assessee, the Commissioner to whom the Income-tax Officer is subordinate shall be made a respondent.

(38) Where the application is by the Commissioner, the assessee shall be made a respondent.

(39) The Bench which heard the appeal giving rise to the application shall hear it unless the President directs otherwise.

(40) On receipt of the notice of the date of hearing of the application, a respondent shall, at least 7 days before the date of hearing, submit a reply in writing to the application.

(41) The reply to the application shall specifically admit or deny whether the question of law formulated by the applicant arises out of the order under sub-section (4) of section 33. If the question formulated by the applicant is defective, the reply shall state in what particular the question is defective and what is the exact question of law which arises out of the said order. The reply shall be accompanied by two copies thereof, a list of documents (the particulars of which shall be stated) which in the opinion of the respondent should form part of the case and a translation in English of any ruch document, where necessary.

(42) On the day fixed for hearing of the application or any other day to which the hearing may have been adjourned, after hearing the parties, the Tribunal shall dismiss the application if it is of opinion that no question of law arises out of the order passed under sub-section (4) of section 33.

(43) Where the Tribunal is of opinion that a question of law arises out of the order under sub-section (4) of section 33, it shall draw up a statement of the case.

(44) The Tribunal shall append to the statement documents which in its opinion should be part of the case.

(45) The order on the application for reference shall be communicated to the assessee and the Commissioner.

(46) Where the requisition is received from the High Court under sub-section (2) of section 66, or where the case is referred back under sub-section (4) of the said section, it shall be dealt with by the Bench referred to in rule 39 unless otherwise directed by the President.

(47) When a copy of the judgment of the High Court is received by the Tribunal under sub-section (5) of section 66, it shall be sent to the Bench referred to in rule 39 for such orders as may be necessary unless the President directs otherwise.

48) (1) Copying fees shall be charged as follows :—

(*a*) For the first 200 words of less	...	12 annas.
(*b*) For every additional 100 words or fraction thereof ...	...	6 annas.

(2) Copy of fees shall be recovered in advance in cash.

(3) Where a party applies for immediate delivery of a copy of evidence taken down by a stenographer, the fees chargeable shall be 50 per cent. more than in sub-rule (1) ; the extra fees charged shall be paid to the stenographer.

(4) Except in cases where copies are supplied free under the rules or instructions for the time being in force and in cases covered by sub-rule (3) the scale of fees to be charged for the supply of copies urgently shall be twice those prescribed by sub-rule (1).

(49) (1) Fees for inspecting records and registers of the Tribunal shall be charged as follows :—

(*a*) For the first hour or part thereof	...	12 annas.
(*b*) For every additional hour or part thereof	...	8 annas.

(2) Fees for inspection shall be recovered in advance and in cash.

(3) No fees shall be charged for inspecting records of a pending appeal or application by a party thereto.

STANDING ORDER NO. 1 OF 1954.

(Dated 11-6-1954)

In persuance of rule 4 of the Appellate Tribunal Rules and in supersession of all existing orders on the subject, I hereby direct, subject to any special order, that all appeals and applications under the Indian Income-tax Act, 1922, the Excess Profits Tax Act of 1940 and the Business Profits Tax Act, 1947, from the States specified in column 2 shall, with immediate effect, be heard and determined by the Benches specified in column 1.

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Bombay Benches	Bombay, Madhya Pradesh, Bhopal, Hyderabad, Kutch and Saurashtra.	
Allahabad Bench	Uttar Pradesh and Vindhya Pradesh.	
Madras Benches	Madras, Coorg, Mysore Travancore-Cochin and Andhra.	
Calcutta Bench	Bengal, Assam, Tripura, and Manipur.	
Delhi Bench	Punjab, Pepsu, Himachal Pradesh, Bilaspur, Delhi, Ajmer, Rajasthan and Madhya Bharat.	
Patna Bench	Behar and Orissa.	
Delhi Bench	Jammu and Kashmir	Added by Notification dated 12th April, 1955.
Calcutta Bench	Chandernagore	

2. All pending appeals and applications, except those in which orders have been reserved after hearing, will be governed by the above order. Appeals and applications already fixed for hearing will be heard by the Bench before which they are so fixed.

3. I further direct with reference to rules 39 and 46 of the Appellate Tribunal Rules that reference applications under section 66 (1) and matters arising under sections 66 (2), 66 (3) , 66 (4) and 66 (5) of the Income-tax Act arising out of orders passed by the Bench from which the jurisdiction is transferred shall be heard and decided by the Bench to whom the jurisdiction is now transferred.

Explanation.—By this order, the ordinary jurisdiction of a Bench will be determined not by the place of the residence or business of the assessee but by the location of the office of the Assessing Officer.

Order of Registrar, Appellate Tribunal Order No. 1 of 1952.—In pursuance of rule 7 or the Appeallate Tribunal Rules and in supersession of all previous orders on the subject, I hereby authorise the Assistant Registrars of the Appeallate Tribunal at Bombay, Allahabad, Calcutta, Delhi and Patna and the senior Assistant Registrar of the Appellate Tribunal at Madras for the purpose of that rule.

Provided that, if at the time of presentation, the Assistant Registrar is absent from the office, the appeal or application as the case may be presented to the Superintendent of the office at Bombay or head clerk of the office at Allahabad, Calcutta, Delhi or Patna or the junior Assistant Registrar at Madras in the office, during office hours :

Provided further that, if the appellant or applicant apprehends that it is the last date of limitation for the presention of his appeal or application, he may present it to the Assistant Registrars at Bombay, Allahabad, Calcutta, Delhi or Patna or the Senior Assistant Registrar at Madras at their residence or other place where they may be found.

SUGGESTIONS FOR GUIDANCE OF ASSESSEES

The following suggestions are made for the guidance of the assessees and their representatives :—

1. In all communications addressed to the Tribunal by the parties with regard to appeals or applications the number thereof, or, if the number is not known, the date of filing thereof, should invariably be given, Failure to furnish this information will cause needless delay in answering correspondence.

2. An application for adjournment of hearing should be made at the earliest possible time. If it could be presented personally, it should be done so. If it cannot be presented personally, a stamped envelope with the address of the assessee or his representative should, as far as possible, accompany the application. If a reply is required telegraphically, the necessary postage stamps should accompany the application. If a telegram is sent asking for adjournment, arrangement should be made for reply paid telegram. The suggestion made in this paragraph is intended not so much as a measure of economy as a measure of greater efficiency. The Tribunal is not bound to reply to application for adjournment. Replies will however be given as far as possible. Unless the assessee hears that his application for

adjournment has been granted, he should remain present at the hearing of the appeal or application as the case may be.

3. Whenever an appeal or application is filed which is connected with an appeal or application relating to the same party filed earlier, reference thereto should invariably be given with the latter appeal or application so that the various connected appeals or applications could be linked up together. This will be for the convenience of the parties themselves.

If any practitioner wishes that appeals and applications relating to different assessees in which he is engaged should be taken up on the same or consecutive days, he should intimate to the Tribunal the particulars of these appeals and applications including the dates of filing thereof, well in advance.

4. An application for an early hearing of an appeal should invariably state why the assessee wants he should be given preference over the appeals made by other assessees. The application should state whether or not the tax has been paid and, if so, to what extent.

5. An application for sending the case for another assessee should also be made at the earliest possible opportunity. Case will not ordinarily be sent for, for the purposes of making an assessment on the same basis as in other cases.

6. Attention is invited to rule 11 of the Appellate Tribunal Rules. That rule provides that a fact which cannot be borne out by or is contrary to record is alleged it should be stated clearly and concisely and should be supported by a duly sworn affidavit. Complaints are at time made before the Tribunal that certain statements attributed to the assessees or their representatives were in fact not made. Unless rule 11 is complied with it is not ordinarily possible to go outside the record. An application for time for filing an affidavit as required by rule 11 at the time of hearing of the appeal will not ordinarily be granted. The object of this suggestion is to save time in hearing and deciding appeals.

7. If an appeal is barred by time, or if there are reasons for believing that it may be barred by time, an application for condoning the delay should be made well in advance before the hearing of the appeal. Such an application should, if necessary, be supported by documentary evidence, as for example, a medical certificate or an affidavit.

8. Three copies (typed if possible) of the statements made by the assessee or the witness of documents relied upon or of extract of accounts, where necessary, should be produced at the time of hearing of the appeal. As for as possible all such documents and papers should be in English.

9. Books of account should be kept handy at the time of hearing of the appeal. If books of account of the year preceding or succeeding the year of account are relevant, they should also be kept handy.

10. Assessees should, as for as possible, be present at the hearing of the appeal. This suggestion is made entirely in the interest of the assessees.

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